UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
NATIONAL VEHICLE AND FUEL EMISSIONS LABORATORY
2565 PLYMOUTH ROAD
ANN ARBOR, MICHIGAN 48105-2498

MAY 04 2017

OFFICE OF
AIR AND RADIATION

Mr. Jeffrey A. Danielson
Vice President and Refinery Manager, Cheyenne Refinery
HollyFrontier Cheyenne Refining LLC
300 Morrie Ave.
Cheyenne, Wyoming 82007

Dear Mr. Danielson:

I am writing in response to the petition from HollyFrontier Refining and Marketing LLC ("HFRM") for a one-year extension of the small refinery exemption for 2016 from the requirements of the Renewable Fuel Standard (RFS) program for HollyFrontier Cheyenne Refining LLC's ("HFCR's") refinery in Cheyenne, Wyoming (the "Cheyenne Refinery"). As you know, the Clean Air Act (CAA) provided that small refineries would be temporarily exempt from the RFS requirements through December 31, 2010. The Cheyenne Refinery qualified as a small refinery that was covered by this temporary exemption.

Pursuant to CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2) small refineries may petition the U.S. Environmental Protection Agency to extend the temporary RFS exemption on the basis that compliance with the RFS requirements will cause "disproportionate economic hardship." Pursuant to these provisions, HFRM submitted a petition to the EPA dated March 6, 2017 to extend the exemption for the Cheyenne Refinery for 2016.

Based on our evaluation of all of the information described in Section III of the enclosed Decision Document, and after consultation with the Department of Energy, we have determined that the Cheyenne refinery will experience "disproportionate economic hardship" by complying with its RFS requirements. See the enclosed Decision Document for a more detailed explanation of our evaluation and determination. Therefore, the EPA is granting HFRM's petition requesting a one-year extension of the Cheyenne Refinery's RFS small refinery temporary exemption. This means that from January 1, 2016 through December 31, 2016, the Cheyenne Refinery's gasoline and diesel production are not subject to the percentage standards of 40 CFR 80.1405, and HFCR is not subject to the requirements of an obligated party for fuel produced at the Cheyenne Refinery during that period.

If you have any questions, please contact Byron Bunker of my staff at 734-214-4155.

Sincerely,

Christopher Grundler, Director
Office of Transportation and Air Quality

Enclosure – Decision Document

Grant of Request for Extension of Small Refinery Temporary Exemption Under the Renewable Fuel Standards Program for HollyFrontier Cheyenne Refining LLC's Cheyenne, WY Refinery

Contains Information Claimed by HollyFrontier Cheyenne Refining LLC To be Confidential Business Information

Office of Transportation and Air Quality

EPA received a petition from HollyFrontier Refining and Marketing, LLC ("HFRM"), a subsidiary of HollyFrontier Corporation ("HFC"), dated March 6, 2017, for a one-year extension of the RFS small refinery exemption for HollyFrontier Cheyenne Refining LLC's (HFCR's) Cheyenne, WY Refinery (the "Cheyenne Refinery"). For the reasons described herein, EPA is granting HFRM's request for an extension of the RFS small refinery exemption for the Cheyenne Refinery for 2016.

I. Required Information and Criteria for an Extension of the Small Refinery Exemption

A. Background - Overall RFS Program

The federal renewable fuel standard ("RFS") program is set forth in section 211(o) of the Clean Air Act ("CAA"), 42 U.S.C. 7545(o), as amended by the Energy Policy Act of 2005 (EPAct), and the Energy Independence and Security Act of 2007 (EISA). The CAA specifies that EPA is to promulgate regulations to ensure that transportation fuel sold or introduced into commerce in the United States, on an average annual basis, contains specified volumes of renewable fuel and three subcategories of renewable fuel - advanced biofuel, cellulosic biofuel, and biomass based diesel. CAA section 211(o)(2)(A)(i). Each year EPA is to use the relevant annual volumes along with an estimate (provided by the Department of Energy) of the amount of gasoline and diesel projected to be sold or introduced into commerce that year, to compute the percentages of total transportation fuel that should qualify as each type of renewable fuel. CAA section 211(o)(3). The relevant annual volumes may come directly from the statute, may be established by EPA for years for which the statute does not specify volumes, or may result from EPA using its statutory authority to adjust statutory volumes. Each of the various refiners and importers who are subject to the RFS standard ("obligated parties") then apply those percentages to their annual production or import of gasoline and diesel to determine the number of gallons of each type of renewable fuel for which they are responsible ("renewable volume obligation", or "RVO"). CAA section 211(o)(3)(B)(ii).

EPA regulations implementing CAA section 211(o) do not require obligated parties to blend renewable fuel into gasoline themselves, but allow them to demonstrate compliance with the RFS by acquiring or generating Renewable Identification Numbers (RINs), which represent renewable fuel that has been produced or imported for use in the United States. 40 CFR 80.1427. An obligated party establishes to the EPA, after each calendar year, that it has accumulated sufficient RINs corresponding to each renewable fuel type to meet its renewable-fuel obligations. Obligated parties need not acquire RINs at the same time that they produce or import fuel but may, if they choose, simply purchase the required number of RINs by the end of the compliance period, once their annual production is known. An obligated party can also carry a surplus or deficit of RINs for one year into the following year. *See generally* 72 FR at 23929-23938.

Both the original RFS statutory provisions enacted pursuant to EPAct, and the current text of the statute as amended by EISA, specify that small refineries were exempt from the renewable fuel standards until calendar year 2011. CAA section 211(o)(9)(A)(i). In

EPA's original implementing regulations ("RFS1"), EPA defined "small refineries" as those with an average crude oil input in 2004 that was no greater than 75,000 barrels/day (bpd). In EPA's regulations implementing the EISA amendments ("RFS2"), EPA amended the definition of small refinery to include those with an average crude oil input no greater than 75,000 bpd crude in 2006. 40 CFR 80.1401. Exempt small refineries were required to notify EPA that they qualified for the exemption by sending verification letters stating their average crude oil input rate during the applicable qualification period. 40 CFR 80.1441(b).

B. Criteria for an RFS Exemption

Under CAA section 211(o)(9), EPA may extend small refinery exemptions beyond December 31, 2010, through one of two mechanisms. First, if the U.S. Department of Energy (DOE) determined through a study mandated under the CAA that compliance with the RFS requirements would impose "disproportionate economic hardship" on a small refinery, EPA was required to extend the exemption for such refinery by at least two years (2011 and 2012). CAA section 211(o)(9)(A)(ii)(II).

Second, small refineries may, on a case-by-case basis, petition EPA for an extension of their exemption. CAA section 211(o)(9)(B). EPA may approve such petitions if it finds that "disproportionate economic hardship" exists. *Id*. EPA regulations require that a petition for an extension of the small refinery exemption specify the factors that demonstrate a "disproportionate economic hardship," provide a detailed discussion regarding the hardship the refinery would face in meeting the RFS requirements, and identify the date the refiner anticipates that compliance with the RFS requirements can reasonably be achieved at the small refinery. 40 CFR 80.1441(e)(2). EPA, in consultation with DOE, will consider the findings of the DOE Small Refinery Study and other economic factors in evaluating such petitions. CAA section 211(o)(9)(B)(ii). EPA is required to respond within 90 days of receipt of a petition, and has discretion to determine the length of any exemption that may be granted. CAA section 211(o)(9)(B)(i), (iii).

C. DOE Small Refinery Study

DOE conducted its initial study under CAA section 211(o)(9)(A)(ii)(I) and concluded that no small refineries should experience "disproportionate economic hardship" from the RFS program.[1] Congress subsequently directed DOE to re-examine its initial study and determine if its conclusions were still valid. Consequently, DOE issued a revised study in March 2011 containing different conclusions.[2] The excerpt below from the DOE Small Refinery Study explains the history of and differences between the two DOE

[1] EPAct 2005 Section 1501 Small Refineries Exemption Study, Office of Policy and International Affairs, U.S. Department of Energy, January 2009.
[2] "Small Refinery Exemption Study, An Investigation into Disproportionate Economic Hardship," Office of Policy and International Affairs, U.S. Department of Energy, March 2011 (DOE Small Refinery Study).

studies, and summarizes DOE's revised approach to evaluating when "disproportionate economic hardship" may exist.[3]

> On February 24, 2009, DOE transmitted its [initial] study [under CAA section 211(o)(9)(A)(ii)] with recommendations to EPA. The study concluded that the market for credits (Renewable Identification Numbers, or RINs) was currently competitive, and found no reason to believe that a competitive market would disproportionately disadvantage participants who purchase credits rather than generating them through blending renewable fuels into their products. Therefore, the study concluded that the exemption for small refineries should not be extended beyond 2010. It was noted that, should market conditions change or if individual small refineries were experiencing economic hardship, small refineries maintained the right under Section 211(o)(9)(B) of the CAA EPAct 2005 to individually petition EPA for an extension of their exemption.
>
> Subsequent events required that the study be revisited. First, the economic downturn reduced the profitability of the refining industry, which has disproportionately impacted some small refiners. Second, the expiration of the biodiesel production credit reduced production and has caused the price of biomass-based diesel RINs to increase. Even though the credit was retroactively restored for 2010, these RINs remain relatively expensive. Finally, in order to capture the unique factors contributing to disproportionate economic hardship, additional consultation with individual refiners was necessary.
>
> On a parallel track to the changed market conditions, Congress directed DOE to revisit the issue of disproportionate economic hardship for small refineries and report its findings.[4] This study addresses the concerns of Congress in directing DOE to:
>
> - Seek comments from owners of small refineries on the reasons why they may believe that they would experience disproportionate economic hardship if the small refinery exemption were not extended.
> - Assess RFS compliance impacts on small refinery utilization rates and profitability.
> - Evaluate the financial ability of individual small refineries to meet RFS requirements.
> - Estimate small refinery impacts by region.

[3] Excerpt from pp. 1-3 of the DOE Small Refinery Study. A complete explanation of DOE's hardship evaluation process and its conclusions are available in a redacted version of the DOE Small Refinery Study at,
http://www.epa.gov/otaq/fuels/renewablefuels/compliancehelp/small-refinery-exempt-study.pdf.

[4] The Senate Report (Senate Report 111- 45) accompanying the FY2010 Energy and Water Development Appropriations Bill included language directing DOE to re-open the study and revisit the issue in greater detail completing the revised study by June 30, 2010. The Appropriations Bill directed DOE to collect data on small refineries and quantify the economic impact of RFS compliance. In addition, the Appropriations Conference Report (House Report 111-278) included language supporting the Senate Appropriations Report request.

- Reassess whether small refinery compliance costs through the purchase of RINs is similar to the cost of compliance by purchasing and blending renewable fuels.
- Estimate the economic impact of RFS on small refineries on a regional basis.

Given this Congressional direction, this study needed to consider the unique factors contributing to disproportionate economic hardship for individual small refineries in the study. Consequently, a survey of small refineries was necessary, something not included in the previous DOE study.

In order to evaluate disproportionate economic hardship caused by the impact of compliance with the RFS on small refineries, these compliance strategies had to be characterized and their varying impact on refineries investigated. There is a direct cost associated with participation in the program. The RFS program is based on a national mandate for renewable fuels, enforced through obligated parties who are responsible to EPA for their pro-rata share of the renewable fuel mandate. However, the program incorporates a market solution to the process of fulfilling the mandates, allowing trading between the obligated parties from those who over-comply to those who find it less advantageous to blend renewable fuels into the transportation fuel mix. Transfer of the obligation is formally accomplished through the market for RINs.

The absolute cost of compliance is one of the key factors in determining disproportionate economic hardship from compliance with RFS2. There are two major pathways that may be followed for compliance. One compliance pathway is blending renewable fuels with gasoline, which may require capital expenditures for equipment. The second pathway is purchasing and maintaining a portfolio of RINs. If certain small refineries must purchase RINs that are far more expensive than those that may be generated through blending, this will lead to disproportionate economic hardship for those effected entities. Economic theory suggests that the price of RINs would reflect the marginal cost of compliance with the RFS, that is, the most expensive cost of blending renewable fuels. The average cost of compliance may be much lower than the marginal cost. If the economics of blending ethanol are favorable, that is, ethanol is less expensive than the gasoline components it replaces, the compliance cost may be essentially zero for refiners that fulfill their obligation through blending renewable fuels. Such refiners would have blended even without the mandate. While current RIN prices for ethanol are moderate (adding less than 2 cents per gallon of renewable fuel), there are numerous circumstances when RIN prices could rise, increasing the cost of compliance and perhaps increasing the cost of compliance more for refineries that rely on RINs for compliance compared to those that do not. These circumstances include both increases in the costs of renewable fuels and the

> inability to blend all of the mandated renewable fuel into conventional transportation fuels (the so-called blend wall).[5]
>
> Small refineries could have particular obstacles that would make compliance more costly than those of large integrated companies. Compliance costs and characteristics of small refineries that make them more vulnerable to financial distress may be unique to each small refinery. Since much of the information is not publicly available, the small refineries were surveyed to make a determination of disproportionate economic hardship. This information was supplemented by publicly available data, which also yielded the baseline from which disproportionate economic impact may be discerned. Given the unique nature of each refinery, it is not possible to make a recommendation on any refinery that did not submit a survey.
>
> Disproportionate economic hardship must encompass two broad components: a high cost of compliance relative to the industry average, and an effect sufficient to cause a significant impairment of the refinery operations. The individual metrics for each refinery were grouped into two general categories: eight metrics representing disproportionate impacts on the refinery and three metrics representing the effect of compliance on the viability of the firm.

To gather necessary information for its revised study, DOE developed a survey form for distribution to an EPA-provided list of small refineries which had RFS temporary exemptions under the terms of the statute through December 31, 2010. DOE spent a significant amount of time and effort developing the survey methodology, including discussions with potential survey participants, and discussions and consultations with EPA. The DOE survey form PI-588 was also made available for public review and comment through publication in a Federal Register notice on July 15, 2010. 75 Fed. Reg. 41165 (July 15, 2010). Three companies submitted comments to DOE and DOE modified the proposed survey form to address the comments.

DOE developed a methodology for evaluating the survey data that is described in the DOE Small Refinery Study. In sum, DOE developed a scoring matrix to evaluate "disproportionate economic hardship" at small refineries. The matrix was comprised of two major sections: one section combining the scoring for disproportionate structural and economic weightings, and a separate section regarding the impact of compliance with the RFS program on the viability of the firm. Eight equally-weighted individual disproportionate structural and economic metrics were assigned a score of 0, 5 or 10 and were then averaged to derive a disproportionate impacts index between 0 and 10. The

---

[5] EPA notes that after further review, contrary to statements in this paragraph from the DOE Study, it has been found that a refinery does <u>not</u> experience disproportionate economic hardship simply because it may need to purchase a significant percentage of its RINs for compliance from other parties, even though RIN prices have increased since the DOE study, because the RIN prices lead to higher sales prices obtained for the refineries' blendstock, resulting in no net cost of compliance for the refinery. *See* Dallas Burkholder, "A Preliminary Assessment of RIN Market Dynamics, RIN Prices, and Their Effects," US EPA Office of Transportation and Air Quality (May 14, 2015), available at www.regulations.gov docket number EPA-HQ-OAR-2015-0111-00062.

disproportionate impacts index was then scaled from 0 to 5 (by dividing the average score by 2), with 5 indicating conditions most likely to lead to "disproportionate economic hardship." Similarly, the three equally-weighted metrics were assigned a score of 0 or 10 for the viability index and were then averaged and scaled from 0 to 5 (by dividing the average score by 2). Disproportionate economic hardship was found if both indices were greater than 1. This requires, for example, a score of 10 for at least two of the eight metrics for the disproportionate structural and economic impact metrics index, and a score of 10 for at least one of the three metrics for the viability metrics index.

DOE sent survey questionnaires to 59 small refineries, and received valid responses from 18 refineries. Of the 18 respondents to its survey request, DOE determined that 13 small refineries scored a 1 or higher in both indices, thus concluding that these small refineries would experience "disproportionate economic hardship" from compliance with the RFS requirements.[6]

In May 2014, DOE issued an Addendum to the DOE Small Refinery Study.[7] The DOE Addendum explains how DOE revised its scoring for the metrics in the viability index to better reflect the changed circumstances for small refineries:

> For the 2011 DOE exemption study, the economic recession and the relative recent implementation of the RFS2 regulations resulted in a number of individual small refineries receiving individual viability metric scores of 10, and scores greater than one for the viability index as a whole. However, circumstances have changed since the 2011 study was completed. Generally, there is an improved business climate for refineries that is associated with the country's economic recovery. In addition, refiners have now had many years since the initiation of the RFS program in 2007 to develop business practices to meet RFS obligations.[8] In assisting EPA in evaluating petitions for small refinery RFS exemptions for 2013, DOE has found that some small refineries should be scored an intermediate level of 5 for metric 3a. This intermediate score acknowledges an impact of RFS compliance costs on efficiency gains, but at a level lower than would justify a score of 10. DOE also has concluded that an intermediate score of 5 may be appropriate for viability metric 3b in certain circumstances. Both of these viability metrics address impacts that may occur across a continuum, and providing for the possibility of an intermediate score allows DOE to more accurately assess an

[6] After DOE completed its study, DOE discovered a misplaced small refinery survey that was not included in the study. DOE determined that this small refinery also qualified for a two-year extension of its RFS exemption.

[7] "Addendum to the Small Refinery Exemption Study, An Investigation into Disproportionate Economic Hardship," Office of Energy Policy and Systems Analysis, U.S. Department of Energy, May 2014 (DOE Addendum).

[8] As the market for renewable fuels matures, obligated parties have developed a much wider suite of physical and contractual arrangements to meet their RFS mandates. In general, small refineries with an RFS exemption have a competitive advantage over the others. This advantage can be enhanced in situations where an exempt party separates some attached RINs through blending renewable fuels, and sells those RINs to improve profitability. A firm's competitive advantage during an exemption period, and any profits from RIN sales during an exemption period, could lead to lower scores in subsequent evaluations of disproportionate economic impact.

individual refinery's economic situation. This is unlike [for] viability metric 3c which involves essentially a binary determination – whether or not RFS compliance costs would likely lead to a facility shut-down. For viability metric 3c, therefore, DOE continues to believe that it is appropriate to limit scores to either a 0 or 10.

The result of allowing intermediate scoring for viability metrics 3a and 3b is that a facility with only a moderate score of 5 in a single viability metric will not have a total viability index score indicating disproportionate economic hardship. On the other hand, a moderate score under both metrics 3a and 3b will be sufficient to generate a viability score indicating the existence of disproportionate economic hardship.[9] DOE has determined that it is appropriate that a moderate score in two viability metrics would result in a total viability index score greater than 1. This reflects the real-world situation where different factors may combine to produce disproportionate economic hardship. In this regard, however, DOE notes that these are two distinct metrics: where DOE determines an intermediate score of 5 under metric 3b on the basis of an individual special event, that same event will not necessarily lead to an intermediate or higher score for viability metric 3a ("RFS compliance costs eliminates efficiency gains").

D. EPA Evaluation of Small Refinery Petitions

In evaluating a petition for the extension of an RFS small refinery exemption, EPA determines whether the petitioner's compliance with its RFS obligations would impose a disproportionate economic hardship. CAA section 211(o)(9)(B)(i). EPA, in consultation with DOE, considers the findings of the DOE Small Refinery Study (including the DOE Addendum) and other economic factors. CAA section 211(o)(9)(B)(ii). Accordingly, as part of EPA's process for evaluating RFS small refinery hardship petitions, EPA asks DOE to evaluate all of the information EPA receives from each petitioner. DOE has expertise in evaluating economic conditions at U.S. refineries, which it used in developing an assessment process for identifying when "disproportionate economic hardship" exists in the context of the RFS program.

EPA considers DOE's assessment of whether a small refinery will face disproportionate impacts in complying with its RFS obligations. The DOE analysis informs EPA's finding of whether "disproportionate economic hardship" exists and in turn EPA's resulting decision about whether to grant or deny a petition for an extension of the RFS temporary exemption for a small refinery.[10] In addition to the metrics DOE applies in

[9] The facility must also score a 1 or higher in the structural and economic weightings index.

[10] EPA also considers DOE's analysis of a small refinery's viability, which DOE assesses as the second component of "disproportionate economic hardship." DOE Small Refinery Study at 3 ("Disproportionate economic hardship must encompass two broad components…and an effect sufficient to cause a significant impairment of the refinery operations."); DOE Small Refinery Study at 27, 36 ("Refiner viability refers to the ability of the refiners to remain competitive and profitable."). In prior decisions, EPA considered that a small refinery could not show disproportionate economic hardship without showing an effect on "viability," but we are changing our approach. While a showing of a significant impairment of refinery

assessing disproportionate economic hardship, EPA considers information petitioners submit that documents or explains relevant economic conditions or business decisions. EPA may also consider other publicly available information regarding the petitioner. These may inform EPA's evaluation regarding how "other economic factors" may cause a small refinery to experience "disproportionate economic hardship" if required to comply with its RFS obligations.

II. Compliance with Petition Requirements

HFRM submitted a petition to EPA dated March 6, 2017 ("2016 Petition" or "petition"), for an extension of the RFS small refinery exemption for the Cheyenne Refinery for 2016. Without an extension of its small refinery exemption, HFCR would be required to comply with the RFS program beginning January 1, 2016. [11]

In support of its petition, HFRM submitted a completed DOE survey form PI-588, which specified the factors that HFRM believes demonstrate disproportionate economic hardship. HFRM also provided additional explanation regarding the hardship the refinery would face in complying with the RFS program. HFRM has also provided 2016 financial data for the Cheyenne, WY refinery, including an estimate of its RFS compliance costs in 2016 absent an extension of the exemption for the refinery. All of this information was forwarded to DOE for consideration in its analysis. EPA considers HFRM's petition to be complete as of March 17, 2017.

EPA finds that HFRM has submitted the information required under 40 CFR 80.1441(e)(2).

III. Background Information

This section summarizes some of the more significant historical and present-day information regarding HFCR's operations, RFS compliance costs and financial condition. HFCR provided most of this information to EPA in its 2016 Petition and in other supporting supplemental documents. EPA obtained the remaining information from public sources (e.g., process information for the Cheyenne, WY refinery from the EIA Annual Refinery Capacity Report, HollyFrontier SEC filings) and from DOE (*e.g.*, average refining industry margins). EPA has not independently verified the accuracy of this information.

---

operations may help establish disproportionate economic hardship, compliance with RFS obligations may impose a disproportionate economic hardship when it is disproportionately difficult for a refinery to comply with its RFS obligations — even if the refinery's operations are not significantly impaired.

[11] The renewable volume obligations for 2014, 2015, and 2016 were established in a single rule which was signed by the EPA Administrator on November 30, 2015. The rule establishes a series of compliance deadlines for obligated parties to demonstrate compliance for each successive year's RVO.

A. Summary of HFCR's Operations

HFC is an independent company that owns five refineries, including the Cheyenne Refinery, which is located in Cheyenne, Wyoming. The Cheyenne Refinery is directly owned by HFCR, which is a wholly owned subsidiary of HFC.[12] The Cheyenne Refinery qualified as a small refinery under both the RFS1 and RFS2 regulations, and was exempted from the RFS standards from 2006 through 2012.[13] The most recent U.S. Energy Information Administration (EIA) Annual Refinery Capacity Report stated that as of January 1, 2016, the refinery could process up to 52,000 barrels per day ("bpd") crude oil. The refinery processes a variety of crude oils ranging from heavy Canadian crude oil to locally-produced light sweet crude oil, and produces gasoline, ultra-low sulfur diesel, LPG, slurry oil and asphalt.[14] A list of primary processing units and approximate production rates for primary liquid products in 2016 is shown below in Table 1.

Table 1
Cheyenne, WY Refinery Process Information[15]

Processing Unit	Capacity
Crude distillation unit	52,000 bpd
Vacuum distillation unit	28,000 bpd
Delayed coking unit	13,700 bpd
Naphtha hydrotreater	10,000 bpd
Naphtha reformer	9,200 bpd
Diesel hydrotreater	18,000 bpd
Fluid catalytic cracking unit	12,500 bpd
Gasoline desulfurization unit	10,000 bpd
Alkylation unit	4,200 bpd
Sulfur recovery unit	116 tons sulfur/day
Volume of primary liquid products in 2016[16]	(b) (4) [redacted]
Geographic locations in which fuel will be sold	PADD 4

[12] HollyFrontier Corporation form 10-K for the fiscal year ended December 31, 2015 ("2015 10-K"), p. 32.
[13] HFRM previously petitioned for, but did not receive, an exemption from RFS compliance for the Cheyenne Refinery for 2013, and for 2015. HFRM did not petition for an exemption from RFS for the Cheyenne Refinery for 2014.
[14] Crude oil information obtained from 2015 10-K, p. 12, product information provided by HFRM in September 16, 2016 email from Steve Moyer.
[15] Data obtained from EIA's Annual Refinery Capacity Report for 2016, which contains data as of January 1, 2016 (e.g. reports 2015 data on this date).
[16] 2016 Petition, p. 2.

The Cheyenne Refinery is located in southeast Wyoming. Gasoline and diesel produced at the refinery are sold at the refinery loading rack, or transported via pipeline for sale at remote terminals. (b) (4) [redacted]

B. Summary of HFCR's RFS Compliance Costs

HFRM provided information on HFCR's projected costs of complying with the renewable fuel standards in 2016, absent an extension of its RFS small refinery exemption. HFRM indicated that HFCR would (b) (4) [redacted][22] Table 2 shows HFCR's estimated RFS compliance costs for (b) (4) [redacted] in 2016.

Table 2
HFCR Estimated RFS Compliance Costs in 2016

renewable fuel type	2016 standard	2016 renewable volume obligation	Renewable volume blended by HFCR	Net cost of renewable blended by HFCR	Total cost of blended renewable fuel	RINs separated by HFCR, ethanol-equivalent	RIN shortfall, ethanol - equivalent	Cost of purchased RINs	Total cost of purchased RINs	Total RFS cost
	%	gallons	gallons	$/gallon	$	$		$/RIN	$	$
cellulosic biofuel	0.128	(b) [redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
biomass-based diesel	1.59	(b) (4) [redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
advanced biofuel	2.01	(b) (4) [redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
renewable fuel	10.1	(b) (4) [redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Total cost					(b) (4) [redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

[17] DOE PI-588 form, part 4.
[18] DOE PI-588 form, part 5.
[19] 2016 Petition, p. 8.
[20] DOE PI-588 form, part 5.
[21] 2016 Petition, pp. 2-3.
[22] 2016 Petition, attachment on p. 12.

C. HFCR's Financial Condition

Table 3a summarizes corporate-level balance sheet data from the PI-588 form submitted for the Cheyenne Refinery showing HFC's end-of-year cash holdings, short-term debt and long-term debt.[23] In 2016, (b) (4) [redacted][25]

Table 3a
HFC Balance Sheet Data, $ million

	12/31/14	12/31/15	12/31/16
Cash and cash equivalents	(b) (4) [redacted]	[redacted]	[redacted]
Short-term debt (current liabilities)	(b) (4) [redacted]	[redacted]	[redacted]
Long-term debt and noncurrent liabilities	(b) (4) [redacted]	[redacted]	[redacted]

HFRM also provided balance sheet data for HFCR in its petition, some of which is shown in Table 3b.[26] (b) (4) [redacted].

Table 3b
HFCR Balance Sheet Data, $ million

	12/31/13	12/31/14	12/31/15	12/31/16
Total property, plant and equipment	(b) (4) [redacted]	[redacted]	[redacted]	[redacted]
Short-term debt (current liabilities)	(b) (4) [redacted]	[redacted]	[redacted]	[redacted]
Long-term debt and noncurrent liabilities	(b) [redacted]	[redacted]	[redacted]	[redacted]
Total equity	(b) (4) [redacted]	[redacted]	[redacted]	[redacted]

[23] PI-588 form, p. 2. The petition only provided data on cash holdings for HFC, none for HFCR.
[24] PI-588 form, p. 3. According to DOE, debt to equity ratio is a key indicator that the financial industry considers in determining whether a company is a good candidate for taking on additional debt - financially sound petroleum refineries typically have a debt to equity ratio of 1.0 or less.
[25] PI-588 form, p. 3. The petition only provided a credit rating for HFC, none for HFCR.
[26] See p. 13 of 2016 Petition.
[27] (b) (4) [redacted] see balance sheet on p. 13 of 2016 Petition.

Table 4 summarizes data from the PI-588 form submitted for the Cheyenne Refinery showing HFCR's refining margins from 2014 through 2016.[28] HFCR's three-year average gross refining margin for 2014-2016 was (b) (4) [redacted] the three-year industry average of $11.40/barrel. HFCR's three-year average net refining margin for 2014-2016 was (b) (4) [redacted] the three-year industry average of $6.52/barrel. For 2016, both the gross refining margin and the net refining margin were (b) (4) [redacted] industry average, with the net refining margin being (b) (4) [redacted].[29] HFCR's refining margins for 2016 include an estimated cost of approximately (b) (4) [redacted].[30]

Table 4
HFCR Refining Margins Data[31]

	2014	2015	2016
Gross refining margin, $ per bbl	(b) (4) [redacted]		[redacted]
U.S. national gross refining margin, $ per bbl			8.68
Net refining margin, $ per bbl	(b) (4) [redacted]	[redacted]	
U.S. national net refining margin, $ per bbl			4.09

HFRM also provided a (b) (4) [redacted] statement for HFCR in its petition, summarized in Tables 5 and 6. HFCR had (b) (4) [redacted]. HFCR's estimated cost of approximately (b) (4) [redacted].[32]

[28] See p. 19 of 2016 Petition.
[29] See Statement of Operations on p. 14 of 2016 Petition.
[30] See Statement of Operations on p. 14 of 2016 Petition.
[31] Gross refining margin is a measure of a refinery's profitability. It is typically calculated by summing total product revenue, subtracting the total cost of raw material (primarily crude oil), and dividing by total product volume. Net refining margin is calculated by also subtracting operating expenses such as purchased fuel, electricity, labor, and routine maintenance expenses from the gross margin, although different refiners may include different expenses in their net margin calculations. Margins are typically calculated prior to accounting for taxes, depreciation, and finance charges. Refining industry gross margins and net margins were calculated based on public data.
[32] See Statement of Operations on p. 14 of 2016 Petition.

Table 5
HFCR [redacted], $ thousand[33]

	2013	2014	2015	2016
Total sales and other revenues	[redacted]	[redacted]	[redacted]	[redacted]
Cost of products sold	[redacted]	[redacted]	[redacted]	[redacted]
Cost of products sold – lower of cost or market	[redacted]	[redacted]	[redacted]	[redacted]
Operating expenses	[redacted]	[redacted]	[redacted]	[redacted]
Depreciation and amortization expense	[redacted]	[redacted]	[redacted]	[redacted]
Amortization of turnaround	[redacted]	[redacted]	[redacted]	[redacted]
Impairment – goodwill and long-lived assets	[redacted]	[redacted]	[redacted]	[redacted]
Total operating costs and expenses	[redacted]	[redacted]	[redacted]	[redacted]
Income (loss) from operations	[redacted]	[redacted]	[redacted]	[redacted]

Table 6
HFCR [redacted], $ thousand[34]

	2013	2014	2015	2016
Income (loss) from operations	[redacted]	[redacted]	[redacted]	[redacted]
Add non-cash charges/subtract non-cash benefits				
Cost of products sold – lower of cost or market	[redacted]	[redacted]	[redacted]	[redacted]
Depreciation and amortization expense	[redacted]	[redacted]	[redacted]	[redacted]
Amortization of turnaround	[redacted]	[redacted]	[redacted]	[redacted]
Impairment – goodwill and long-lived assets	[redacted]	[redacted]	[redacted]	[redacted]
Operating income (loss) (excluding non-cash items)	[redacted]	[redacted]	[redacted]	[redacted]
Less capital expenditures and turnaround expenditures	[redacted]	[redacted]	[redacted]	[redacted]
Free cash flow	[redacted]	[redacted]	[redacted]	[redacted]

IV. Application of the Criteria for Hardship Relief

EPA may extend the small refinery exemption for HFCR's Cheyenne Refinery if EPA determines that the refinery would experience "disproportionate economic hardship" in complying with the RFS program. This section provides the analysis and rationale for our grant of HFRM's petition to extend the small refinery exemption for HFCR.

[33] *Id.*
[34] See [redacted] statement on p. 17 of 2016 Petition.

A. DOE's Evaluation of the Cheyenne Refinery

EPA asked DOE to evaluate whether the Cheyenne Refinery will experience "disproportionate economic hardship" in complying with the RFS requirements. EPA provided DOE all of the information described in Section III above. Table 7 summarizes the results of DOE's evaluation. A detailed description of DOE's methodology is provided in the DOE Small Refinery Study.

Table 7 [35]
DOE Evaluation of HFCR's Petition

			Score
1	**Disproportionate Structural Impact Metrics**		**Score**
a	Access to capital/credit	0 = Good access (BB- or above credit rating), 5 = Moderate access (rating in B's) 10 = Poor access (C rating or 50% D/E)	[redacted]
b	Other business lines besides refining and marketing	0 = Other Lines, 10 = No Other Lines	[redacted]
c	Local market acceptance of Renewables	0 = Products accepted, 10 = Product not accepted	
	i E10	0 = High acceptance, 5 = Low acceptance 10= No acceptance	[redacted]
	ii E85	Not scored because of small E85 volumes	
	iii Biodiesel	Not available	
d	Percentage of diesel production	0 = D/(G+D) < Industry Avg. 5 = D/(G+D) > Ind. Avg. <40%. 10=D/(G+D) > 40%	[redacted]
e	Subject to exceptional state regulations	0 = not subject, 5= Some barriers for compliance 10 = subject to exceptional state regulations	[redacted]
2	**Disproportionate Economic Impact Metrics**		
a	Relative refining margin measure[36]	0 = Above 3-year industry average 5 = Positive, below 3-year industry average 10= Negative	[redacted]
b	Renewable fuel blending (% of production)		
	i Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%	[redacted]
	ii Biodiesel blending (not used)	0 = 1.1% of diesel production, 1 = <1.1%	

[35] The gray-shaded categories were developed as part of the DOE Small Refinery Study, but DOE has chosen not to assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE's explanation regarding why it does not assign scores for the gray-shaded categories.

[36] DOE calculates three-year average industry refining gross and net margins for 2013, 2014, and 2015, based on public data. The three-year average industry gross and net margins for these years were \$12.32/bbl and \$7.35/bbl, respectively (net margin only includes direct operating expenses, it does not include financial expenses such as interest, and depreciation/amortization). HFCR's three-year average gross and net margins for 2013-2015 were [redacted] and [redacted], respectively. In scoring this metric, DOE only uses the three-year average refining net margins for the industry and for HFCR.

iii	Other Advanced Biofuel blending (not used)	0 = some blending, 10 = no blending	
c	In a niche market	0 = niche 5 = moderate niche impact 10 = no niche	[redacted]
d	RINs net revenue or cost[37]	0 = revenue > cost, 10 = revenue < cost	
	Subtotal (average)		[redacted]
	Ranking (subtotal x 0.50)		
3	**Viability Metrics**		
a	Compliance cost eliminates efficiency gains (impairment)	0 = no impact on efficiency, 5 = moderate impact, 10 = impact on efficiency	[redacted]
b	Individual special events	0 = no special event, 5 = moderate event, 10 = special event impacting viability	[redacted]
c	Compliance costs likely to lead to shut down	0 = not likely to shut down, 10 = likely to shut down	[redacted]
	Subtotal (average)		[redacted]
	Ranking (subtotal x 0.50)		

The first ranking in Table 6 (disproportionate impacts) is a combination of the disproportionate structural index and the disproportionate economic impact index, and the second ranking in Table 6 is the viability index. (b)(4) applied by DOE [redacted] (see DOE's Small Refinery Study for more detailed explanation).

DOE has not changed its basic methodology for evaluating small refinery RFS hardship petitions, but it now recommends a "50% waiver" of a small refinery's RFS requirements if <u>either</u> of the rankings in the scoring matrix is equal to or greater than 1. This is due to language included in an explanatory statement accompanying the 2016 Consolidated Appropriations Act instructing DOE as follows: "If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner."[38] (b)(4) applied by DOE [redacted]

B. EPA's Evaluation of HFCR's Hardship Petition for 2016

EPA has evaluated all of the information described in Section III, as well as DOE's analysis of HFCR, to determine whether the Cheyenne Refinery will experience "disproportionate economic hardship" from compliance with its RFS requirements for

[37] DOE has not scored this category for any hardship petition evaluations.
[38] Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015). The Explanatory Statement is available at: https://rules.house.gov/bill/114/hr-2029-sa.

2016. In the discussion that follows, EPA independently reviews the information as we consider other economic factors in our analysis, including, but not limited to, profitability, net income, cash flow and cash balances, gross and net refining margins, ability to pay for refinery improvement projects, corporate structure, debt and other financial obligations, RIN prices, and the cost of compliance through RIN purchases. After considering all of this information, EPA finds that HFCR will experience "disproportionate economic hardship" from compliance with the RFS program for 2016.

In determining whether HFCR will experience disproportionate economic hardship, EPA considers whether compliance with its RFS obligations disproportionately impacts HFCR. EPA generally defers to DOE's assessment due to DOE's expertise on the refining industry. In its industry-wide analysis, DOE has found that poor access to capital and credit, lack of other business lines, and high diesel production compared to the industry average can suggest a disproportionate structural impact. Poor refining margins, limited ability to blend ethanol, and market competition can suggest a disproportionate economic impact. These disproportionate impacts could disadvantage a refinery relative to the industry average and make compliance with RFS obligations relatively more burdensome. (b)(4) applied by DOE [redacted][39]

However, for a refinery like the Cheyenne Refinery, its disproportionate economic hardship may be the result of other economic factors, including a difficult year for the industry as a whole. Throughout the industry, refineries reported lower net refining margins in 2016. This industry-wide downward trend, coupled with its own particular circumstances, can result in tangible effects on the small refinery, including diminished refining margins, reduced profitability, cash flow limitations that can hinder its ability to acquire RINs for compliance, and the potential to impair refinery operations. In addition, such refineries often lack access to capital or credit that can also be necessary to achieve compliance.

HFCR's financial performance shows that it would suffer disproportionate economic hardship from compliance with RFS obligations. As shown in Tables 5 and 6, HFCR experienced (b) (4) [redacted] These Tables also show (b) (4) [redacted] HFCR also (b) (4) [redacted].

[39] See Table 7.
[40] See Table 4.

For the reasons discussed above, EPA finds that the Cheyenne Refinery would suffer a disproportionate economic hardship if it had to comply with its RFS obligations for 2016 and should be granted full relief.[41]

V. Conclusion

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption based on a demonstration by the small refinery of a "disproportionate economic hardship" from compliance with its RFS requirements. Based on our analysis of all of the available information about HFCR, and our consultation with DOE, EPA has concluded that HFCR will experience "disproportionate economic hardship" in complying with its 2016 RFS requirements. Therefore, EPA is hereby granting HFCR's request for a temporary extension of HFCR's small refinery RFS hardship exemption for 2016.

This decision is a final agency action for purposes of CAA section 307(b)(1). Pursuant to CAA section 307(b)(1), judicial review of this final agency action may be sought only in the United States Court of Appeals for the appropriate circuit. Judicial review of this final agency action may not be obtained in subsequent proceedings, pursuant to CAA section 307(b)(2). This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.

---

[41] EPA acknowledges that (b)(4) applied by DOE [redacted] While a showing of a significant impairment of refinery operations may help establish disproportionate economic hardship (see footnote 10), EPA may choose to grant full relief based on its own independent review of the small refinery's information.

Grant of Request for Extension of Small Refinery Temporary Exemption Under the Renewable Fuel Standards Program For

HollyFrontier Woods Cross Refining LLC's Woods Cross, Utah Refinery

Contains Information Claimed by

HollyFrontier Woods Cross Refining LLC To be Confidential Business Information

Office of Transportation and Air Quality

EPA received a petition from HollyFrontier Refining and Marketing, LLC ("HFRM") dated September 12, 2017, for a one-year extension of the Renewable Fuel Standard (RFS) small refinery exemption for HollyFrontier Woods Cross Refining LLC's ("HFWCR's") Woods Cross, UT refinery (the "Woods Cross Refinery") in 2016. For the reasons described herein, EPA is granting HFRM's request for an extension of HFWCR's RFS small refinery exemption for 2016.

Section 211(o)(9) of the Clean Air Act (CAA) authorizes the Administrator to temporarily exempt small refineries from their renewable fuel volume obligations under the RFS program on the basis of a finding of "disproportionate economic hardship" (DEH). The statute directs EPA, in consultation with the Department of Energy (DOE), to consider the (DOE) Small Refinery Study and "other economic factors" in evaluating small refinery exemption petitions, but CAA section 211(o)(9) leaves the definition of DEH to the Administrator's discretion for purposes of implementing this exemption provision.

After evaluating information submitted by the petitioner, DOE provides a recommendation to EPA on whether a refinery merits exemption from RFS. As described in its study, DOE assesses the potential for DEH at a refinery on the basis of two sets of metrics. One set assesses structural and economic conditions that could disproportionately impact the refinery, (described as "disproportionate impacts" for purposes of DOE's scoring metrics, and also described as "structural" factors or conditions here). The other set assesses economic factors that could cause viability concerns (described as "viability" for purposes of DOE's scoring metrics, and also described as "economic" factors or conditions here).

In earlier decisions, DOE and EPA considered that DEH exists only when a refinery experiences both disproportionate impacts and viability impairment. In response to concerns that the two agencies' threshold for establishing DEH was too stringent, Congress clarified to DOE that DEH can exist if DOE finds that a small refinery is experiencing *either* disproportionate impacts *or* viability impairment. If so, Congress directed DOE to recommend a 50 percent exemption from the RFS. This is due to language included in an explanatory statement accompanying the 2016 Appropriations Act that stated: "If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner."[1] (b)(4) applied by DOE [redacted] Woods Cross Refinery's (b)(4) applied by DOE [redacted] Woods Cross Refinery (i.e., a partial extension of the Woods Cross Refinery's temporary exemption).

EPA's earlier analysis of DEH was recently challenged in the United States Court of Appeals for the Tenth Circuit.[2] The Court held that EPA's previous application of DEH was "at odds with Congress's statutory command."[3] Specifically, the Court stated:

> EPA has exceeded its statutory authority under the CAA in interpreting the hardship exemption to require a threat to a refinery's survival as an ongoing operation. That

---

[1] Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015). The Explanatory Statement is available at: https://rules.house.gov/bill/114/hr-2029-sa.
[2] *Sinclair Wy. Refining Co. v. EPA*, 867 F.3d 1211 (10th Cir. 2017).
[3] *Id*. at 1221.

interpretation is outside the range of permissible interpretations of the statute and therefore inconsistent with Congress's statutory mandate.[4]

The Court then vacated EPA's earlier decisions that denied 2014 hardship exemptions and remanded them back to EPA for further consideration. However, prior to this ruling, EPA had already changed its approach for the 2016 small refinery petitions issued in May 2017. For the purposes of implementing CAA section 211(o)(9) for 2016 small refinery exemption decisions, EPA has determined that DEH can exist on the basis of adverse structural conditions alone. A difficult year for the refining industry as a whole may exacerbate economic problems for small refineries that face disproportionate impacts. Throughout the industry, refineries reported lower net refining margins in 2016. This industry-wide downward trend can result in tangible effects on small refineries with adverse structural conditions, including diminished refining margins, reduced profitability, cash flow limitations that can hinder its ability to acquire renewable fuel credits (Renewable Identification Numbers, or RINs) for compliance, and the potential to impair refinery operations. In addition, small refineries sometimes lack access to capital or credit that can also be necessary to achieve compliance.

In its industry-wide analysis, DOE has found that poor access to capital and credit, lack of other business lines, and high diesel production compared to the industry average can suggest a disproportionate structural impact. Poor refining margins, limited ability to blend ethanol, and market competition can suggest a disproportionate economic impact. As noted above, DOE scores the disproportionate structural and economic impacts together as half of its DEH analysis. Here, EPA acknowledges that (b)(4) applied by DOE [redacted] Woods Cross Refinery (b)(4) applied by DOE [redacted] EPA's review of DOE's analysis is in accord with this conclusion. These conditions disadvantage the refinery relative to larger refineries that may not face similar structural challenges.

DOE also assessed economic factors as the second component of DEH. Here, EPA acknowledges that (b)(4) applied by DOE [redacted] Woods Cross Refinery (b)(4) applied by DOE [redacted] [5] Therefore, (b)(4) applied by DOE [redacted] Woods Cross Refinery (b)(4) applied by DOE [redacted]

Table 1[6]
DOE Evaluation of HFRM's Petition

1	**Disproportionate Structural Impact Metrics**		Score
a	Access to capital/credit	0 = Good access (BB- or above credit rating), 5 = Moderate access (rating in B's) 10 = Poor access (C rating or 50% D/E)	[redacted]
b	Other business lines besides refining and marketing	0 = Other Lines, 10 = No Other Lines	[redacted]

[4] *Id.* at 1213.
[5] From DOE recommendation for the Woods Cross Refinery transmitted to EPA on October 7, 2017.
[6] The gray-shaded categories were developed as part of the DOE Small Refinery Study, but DOE has chosen not to assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE's explanation regarding why it does not assign scores for the gray-shaded categories.

c	Local market acceptance of Renewables	0 = Products accepted, 10 = Product not accepted	
	i E10	0 = High acceptance, 5 = Low acceptance 10= No acceptance	[redacted]
	ii E85	Not scored because of small E85 volumes	
	iii Biodiesel	Not available	
d	Percentage of diesel production	0 = D/(G+D) < Industry Avg. 5 = D/(G+D) > Ind. Avg<40%. 10=D/(G+D) > 40%	[redacted]
e	Subject to exceptional state regulations	0 = not subject, 5= Some barriers for compliance 10 = subject to exceptional state regulations	[redacted]
2	**Disproportionate Economic Impact Metrics**		
a	Relative refining margin measure [7]	0 = Above 3 year industry average 5 = Positive, below 3 year industry average 10= Negative	[redacted]
b	Renewable fuel blending (% of production)		
	i Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%	[redacted]
	ii Biodiesel blending (not used)	0 = 1.1% of diesel production, 1 = <1.1%	
	iii Other Advanced Biofuel blending (not used)	0 = some blending, 10 = no blending	
c	In a niche market	0 = niche 5 = moderate niche impact 10 = no niche	[redacted]
d	RINs net revenue or cost [8]	0 = revenue > cost, 10 = revenue < cost	
	Subtotal (average)		[redacted]
	Ranking (subtotal x 0.50)		[redacted]
3	**Viability Metrics**		
a	Compliance cost eliminates efficiency gains (impairment)	0 = no impact on efficiency, 5 = moderate impact, 10 = impact on efficiency	[redacted]
b	Individual special events	0 = no special event, 5 = moderate event, 10 = special event impacting viability	[redacted]
c	Compliance costs likely to lead to shut down	0 = not likely to shut down, 10 = likely to shut down	[redacted]
	Subtotal (average)		[redacted]
	Ranking (subtotal x 0.50)		[redacted]

[7] DOE has calculated refining industry gross margins and net margins for 2014, 2015, and 2016, based on public data. The average industry gross and net margins for these three years were $11.40/bbl and $6.52/bbl, respectively (net margin only includes direct operating expenses, it does not include financial expenses such as interest, and depreciation/amortization). HFWCR's average gross margin and net margin (excluding financial expenses) for 2014-2016 were [redacted] and [redacted], respectively.

[8] DOE has not scored this category for any hardship petition evaluations.

DOE's analysis recommending a 50 percent waiver is only one factor in EPA's evaluation regarding whether to grant or deny a petition for a small refinery. EPA's analysis extends beyond the metrics DOE applies in assessing potential DEH. EPA considers all of the information submitted by a petitioner when it considers "other economic factors" in evaluating a small refinery petition. For example, EPA considers the information submitted by the petitioner that documents or explains relevant economic conditions or business decisions by the petitioner. EPA may also consider other publicly available information regarding the petitioner that informs EPA's evaluation regarding how "other economic factors" may cause a small refinery to experience DEH if required to comply with its RFS obligations.

HFRM submitted a petition to EPA on September 12, 2017, for an extension of the RFS small refinery exemption for the Woods Cross Refinery for 2016. In support of its petition, HFRM submitted a completed DOE survey form PI-588, which specified the factors that HFRM believes demonstrate DEH. The petition stated that HFWCR was (b) (4) [redacted].[9] HFRM stated in its petition that (b) (4) [redacted] Woods Cross.[10] In 2016, HFWCR experienced (b) (4) [redacted].[11] HFRM also reported (b) (4) [redacted].[12] The petition stated that HFWCR was (b) (4) [redacted].[13] (b) (4) [redacted] HFWCR (b) (4) [redacted][14]

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption from compliance with its RFS requirements based on a demonstration by the small refinery of a DEH. As described above, HFRM's petition presents financial information that documents (b) (4) [redacted] along with other metrics of poor economic performance in 2016. Based on our review of all of the available information about HFWCR, and our consultation with DOE, EPA has concluded that the Woods Cross Refinery will experience DEH that can be relieved in whole or in part by removing its RFS obligations for 2016. Therefore, EPA is granting HFRM's request for a temporary extension of the Woods Cross Refinery's small refinery RFS hardship exemption for 2016.

EPA's decision is consistent with (b)(4) applied by DOE [redacted] Woods Cross Refinery (b)(4) applied by DOE [redacted] (b)(4) applied by DOE [redacted] EPA has decided to grant 100% relief. As explained above, this decision is appropriate under the statutory authority

[9] HFRM Petition at 2.
[10] Id.
[11] Id.
[12] HFRM Petition attachment titled "HollyFrontier Woods Cross Refining LLC Operating Data".
[13] HFRM Petition at 2-3.
[14] Id.

to consult with DOE, consider the 2011 DOE study, and “other economic factors” and it is consistent with the case law recognizing EPA’s independent authority in deciding whether to grant or deny RFS small refinery exemption petitions.[15]

This decision is a final agency action for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1), judicial review of this final agency action may be sought in the United States Court of Appeals for the appropriate circuit. This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.

[15] *Sinclair*, 867 F.3d at 1218; *See also Hermes Consol., LLC v. EPA*, 787 F.3d 568, 574-575 (D.C. Cir. 2015); *Lion Oil Co. v. EPA*, 792 F.3d 978, 982-983 (8th Cir. 2015).

Grant of Request for Extension of Small Refinery Temporary Exemption Under the Renewable Fuel Standard Program For HollyFrontier Cheyenne Refining LLC's Cheyenne, Wyoming Refinery

Contains Information Claimed by HollyFrontier Cheyenne Refining LLC To be Confidential Business Information

Office of Transportation and Air Quality

EPA received a petition from HollyFrontier Refining and Marketing LLC ("HFRM"), dated March 8, 2018, for a one-year extension of the Renewable Fuel Standard (RFS) small refinery exemption for HollyFrontier Cheyenne Refining LLC's ("HFCR's") Cheyenne, Wyoming Refinery (the "Cheyenne Refinery") in 2017. For the reasons described herein, EPA is granting HFRM's request for an extension of the Cheyenne Refinery's RFS small refinery exemption for 2017.

Section 211(o)(9) of the Clean Air Act (CAA) authorizes the Administrator to temporarily exempt small refineries from their renewable fuel volume obligations under the RFS program on the basis of a finding of "disproportionate economic hardship" (DEH). The statute directs EPA, in consultation with the Department of Energy (DOE), to consider the (DOE) Small Refinery Study and "other economic factors" in evaluating small refinery exemption petitions, but CAA section 211(o)(9) leaves the definition of DEH to the Administrator's discretion for purposes of implementing this exemption provision.

After evaluating information submitted by the petitioner, DOE provides a recommendation to EPA on whether a refinery merits exemption from the RFS. As described in its study, DOE assesses the potential for DEH at a refinery on the basis of two sets of metrics. One set assesses structural and economic conditions that could disproportionately impact the refinery (described as "disproportionate impacts" for purposes of DOE's scoring metrics, and also described as "structural" factors or conditions here). The other set assesses economic factors that could cause viability concerns (described as "viability" for purposes of DOE's scoring metrics, and also described as "economic" factors or conditions here).

In previous year decisions, DOE and EPA considered that DEH exists only when a refinery experiences both disproportionate impacts and viability impairment. In response to concerns that the two agencies' threshold for establishing DEH was too stringent, Congress clarified to DOE that DEH can exist if DOE finds that a small refinery is experiencing *either* disproportionate impacts *or* viability impairment. If so, Congress directed DOE to recommend a 50 percent exemption from the RFS. This was relayed in language included in an explanatory statement accompanying the 2016 Appropriations Act that stated: "If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner."[1] Congress then directed EPA to follow DOE's recommendation.[2] [redacted] the Cheyenne Refinery's [redacted] the Cheyenne Refinery ([redacted]

For the purposes of implementing CAA section 211(o)(9) for 2017 small refinery exemption decisions, EPA has determined that DEH can exist on the basis of adverse structural

[1] Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015). The Explanatory Statement is available at: https://rules.house.gov/bill/114/hr-2029-sa.

[2] Consolidated Appropriations Act, 2017, Pub. L. No. 115-31 (2017); *See also* Senate Report 114-281 ("When making decisions about small refinery exemptions under the RFS program, the Agency is directed to follow DOE's recommendations which are to be based on the original 2011 Small Refinery Exemption Study prepared for Congress and the conference report to division D of the Consolidated Appropriations Act of 2016.").

conditions alone. A difficult year may exacerbate economic problems for small refineries that face disproportionate impacts, resulting in tangible effects including diminished refining margins, reduced profitability, cash flow limitations that can hinder its ability to acquire renewable fuel credits (Renewable Identification Numbers, or RINs) for compliance, and the potential to impair refinery operations. In addition, small refineries sometimes lack access to capital or credit that can also be necessary to achieve compliance.

In its industry-wide analysis, DOE has found that poor access to capital and credit, lack of other business lines, and high diesel production compared to the industry average can suggest a disproportionate structural impact. Poor refining margins, limited ability to blend ethanol, and market competition can suggest a disproportionate economic impact. As noted above, DOE scores the disproportionate structural and economic impacts together as half of its DEH analysis. Here, EPA acknowledges that [redacted] (b)(4) applied by DOE the Cheyenne Refinery [redacted] (b)(4) applied by DOE EPA's review of DOE's analysis is in accord with this conclusion. These conditions disadvantage the refinery relative to larger refineries that may not face similar structural challenges.

DOE also assessed economic factors as the second component of DEH. Here, EPA acknowledges tha [redacted] (b)(4) applied by DOE the Cheyenne Refinery's [redacted] (b)(4) applied by DOE (b)(4) applied by DOE the Cheyenne Refinery [redacted] (b)(4) applied by DOE

Table 1[4]
DOE Evaluation of HFRM's Petition for the Cheyenne Refinery

1	Disproportionate Structural Impact Metrics		Score
a	Access to capital/credit	0 = Good access (BB- or above credit rating), 5 = Moderate access (rating in B's) 10 = Poor access (C rating or 50% D/E)	[redacted]
b	Other business lines besides refining and marketing	0 = Other Lines, 10 = No Other Lines	[redacted]
c	Local market acceptance of Renewables	0 = Products accepted, 10 = Product not accepted	
	i E10	0 = High acceptance, 5 = Low acceptance 10= No acceptance	[redacted]
	ii E85	Not scored because of small E85 volumes	
	iii Biodiesel	Not available	
d	Percentage of diesel production	0 = D/(G+D) < Industry Avg. 5 = D/(G+D) > Ind. Avg<40%. 10=D/(G+D) > 40%	[redacted]

[3] From DOE recommendation for the Cheyenne Refinery transmitted to EPA on March 23, 2018.
[4] The gray-shaded categories were developed as part of the DOE Small Refinery Study, but DOE has chosen not to assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE's explanation regarding why it does not assign scores for the gray-shaded categories.

	e	Subject to exceptional state regulations	0 = not subject, 5= Some barriers for compliance 10 = subject to exceptional state regulations	[redacted]
2	**Disproportionate Economic Impact Metrics**			
	a	Relative refining margin measure [5]	0 = Above 3 year industry average 5 = Positive, below 3 year industry average 10= Negative	[redacted]
	b	Renewable fuel blending (% of production)		
		i Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%	[redacted]
		ii Biodiesel blending (not used)	0 = 1.1% of diesel production, 1 = <1.1%	
		iii Other Advanced Biofuel blending (not used)	0 = some blending, 10 = no blending	
	c	In a niche market	0 = niche 5 = moderate niche impact 10 = no niche	[redacted]
	d	RINs net revenue or cost [6]	0 = revenue > cost, 10 = revenue < cost	
		Subtotal (average)		[redacted]
		Ranking (subtotal x 0.50)		
3	**Viability Metrics**			
	a	Compliance cost eliminates efficiency gains (impairment)	0 = no impact on efficiency, 5 = moderate impact, 10 = impact on efficiency	[redacted]
	b	Individual special events	0 = no special event, 5 = moderate event, 10 = special event impacting viability	[redacted]
	c	Compliance costs likely to lead to shut down	0 = not likely to shut down, 10 = likely to shut down	[redacted]
		Subtotal (average)		[redacted]
		Ranking (subtotal x 0.50)		

EPA's analysis extends beyond the metrics DOE applies in assessing potential DEH. EPA considers all of the information submitted by a petitioner when it considers "other economic factors" in evaluating a small refinery petition. For example, EPA considers the information submitted by the petitioner that documents or explains relevant economic conditions or business decisions by the petitioner. EPA may also consider other publicly available information regarding the petitioner that informs EPA's evaluation regarding how "other economic factors" may cause a small refinery to experience DEH if required to comply with its RFS obligations.

[5] DOE has calculated refining industry gross margins and net margins for 2014, 2015, and 2016, based on public data. The average industry gross and net margins for these three years were \$11.40/barrel and \$6.52/barrel, respectively (net margin only includes direct operating expenses, it does not include financial expenses such as interest, and depreciation/amortization). The Cheyenne Refinery's average gross margin and net margin (excluding financial expenses) for 2014-2016 were [redacted] and [redacted], respectively.

[6] DOE has not scored this category for any hardship petition evaluations.

HFRM submitted a petition to EPA on March 8, 2018, for an extension of the RFS small refinery exemption for the Cheyenne Refinery for 2017. In support of its petition, HFRM submitted financial and other information, including a completed DOE survey form PI-588 which specified the factors that HFRM believes demonstrate DEH. The petition stated that (b) (4) [redacted][7] The petition also stated (b) (4) [redacted][8] Lastly, HFRM provided (b) (4) [redacted][9]

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption from compliance with its RFS requirements based on a demonstration by the small refinery of DEH. As described above, HFRM's petition presents information demonstrating unfavorable structural conditions. Based on our review of all of the available information about the Cheyenne Refinery, and our consultation with DOE, EPA has concluded that the Cheyenne Refinery will experience DEH that can be relieved in whole or in part by removing its RFS obligations for 2017. Therefore, EPA is granting HFRM's request for a temporary extension of the Cheyenne Refinery's small refinery RFS hardship exemption for 2017.

EPA's decision is consistent with (b)(4) applied by DOE [redacted] the Cheyenne Refinery (b)(4) applied by DOE [redacted] and EPA has decided to grant 100% relief. As explained above, this decision is appropriate under the statutory authority to consult with DOE, consider the 2011 DOE study, and "other economic factors" and it is consistent with the case law recognizing EPA's independent authority in deciding whether to grant or deny RFS small refinery exemption petitions.[10]

This decision is a final agency action for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1), judicial review of this final agency action may be sought in the United States Court of Appeals for the appropriate circuit. This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.

[7] HFRM petition at 8.
[8] Id.
[9] Cheyenne 2013-2017 Financial Information, attachment to HFRM petition.
[10] *Sinclair*, 874 F.3d at 1166; *See also Hermes Consol., LLC v. EPA*, 787 F.3d 568, 574-575 (D.C. Cir. 2015); *Lion Oil Co. v. EPA*, 792 F.3d 978, 982-983 (8th Cir. 2015).

Grant of Request for Extension of Small Refinery Temporary Exemption Under the Renewable Fuel Standard Program For HollyFrontier Woods Cross Refining, LLC's West Bountiful, Utah Refinery

Contains Information Claimed by HollyFrontier Woods Cross Refining, LLC To be Confidential Business Information

Office of Transportation and Air Quality

EPA received a petition from HollyFrontier Refining and Marketing, LLC ("HFRM") dated March 16, 2018, for a one-year extension of the Renewable Fuel Standard (RFS) small refinery exemption for HollyFrontier Woods Cross Refining, LLC's ("HFWCR's") West Bountiful, Utah refinery ("the Woods Cross Refinery") in 2017. For the reasons described herein, EPA is granting HFRM's request for an extension of the Woods Cross Refinery's RFS small refinery exemption for 2017.

Section 211(o)(9) of the Clean Air Act (CAA) authorizes the Administrator to temporarily exempt small refineries from their renewable fuel volume obligations under the RFS program on the basis of a finding of "disproportionate economic hardship" (DEH). The statute directs EPA, in consultation with the Department of Energy (DOE), to consider the (DOE) Small Refinery Study and "other economic factors" in evaluating small refinery exemption petitions, but CAA section 211(o)(9) leaves the definition of DEH to the Administrator's discretion for purposes of implementing this exemption provision.

After evaluating information submitted by the petitioner, DOE provides a recommendation to EPA on whether a refinery merits exemption from the RFS. As described in its study, DOE assesses the potential for DEH at a refinery on the basis of two sets of metrics. One set assesses structural and economic conditions that could disproportionately impact the refinery, (described as "disproportionate impacts" for purposes of DOE's scoring metrics, and also described as "structural" factors or conditions here). The other set assesses economic factors that could cause viability concerns (described as "viability" for purposes of DOE's scoring metrics, and also described as "economic" factors or conditions here).

In previous year decisions, DOE and EPA considered that DEH exists only when a refinery experiences both disproportionate impacts and viability impairment. In response to concerns that the two agencies' threshold for establishing DEH was too stringent, Congress clarified to DOE that DEH can exist if DOE finds that a small refinery is experiencing *either* disproportionate impacts *or* viability impairment. If so, Congress directed DOE to recommend a 50 percent exemption from the RFS. This was relayed in language included in an explanatory statement accompanying the 2016 Appropriations Act that stated: "If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner."[1] Congress then directed EPA to follow DOE's recommendation.[2] (b)(4) applied by DOE [redacted] Woods Cross Refinery's (b)(4) ap [redacted] oods Cross Refinery (b) (4) [redacted]

For the purposes of implementing CAA section 211(o)(9) for 2017 small refinery exemption decisions, EPA has determined that DEH can exist on the basis of adverse structural

[1] Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015). The Explanatory Statement is available at: https://rules.house.gov/bill/114/hr-2029-sa.
[2] Consolidated Appropriations Act, 2017, Pub. L. No. 115-31 (2017); *See also* Senate Report 114-281 ("When making decisions about small refinery exemptions under the RFS program, the Agency is directed to follow DOE's recommendations which are to be based on the original 2011 Small Refinery Exemption Study prepared for Congress and the conference report to division D of the Consolidated Appropriations Act of 2016.").

conditions alone. A difficult year may exacerbate economic problems for small refineries that face disproportionate impacts, resulting in tangible effects including diminished refining margins, reduced profitability, cash flow limitations that can hinder its ability to acquire renewable fuel credits (Renewable Identification Numbers, or RINs) for compliance, and the potential to impair refinery operations. In addition, small refineries sometimes lack access to capital or credit that can also be necessary to achieve compliance.

In its industry-wide analysis, DOE has found that poor access to capital and credit, lack of other business lines, and high diesel production compared to the industry average can suggest a disproportionate structural impact. Poor refining margins, limited ability to blend ethanol, and market competition can suggest a disproportionate economic impact. As noted above, DOE scores the disproportionate structural and economic impacts together as half of its DEH analysis. Here, EPA acknowledges that DOE found that the Woods Cross Refinery demonstrated unfavorable structural conditions. EPA's review of DOE's analysis is in accord with this conclusion. These conditions disadvantage the refinery relative to larger refineries that may not face similar structural challenges.

DOE also assessed economic factors as the second component of DEH. Here, EPA acknowledges that [redacted] (b)(4) applied by DOE the Woods Cross Refinery [redacted] (b)(4) applied by DOE [3] Therefore D [redacted] (b)(4) applied by DOE Woods Cross Refinery [redacted] (b)(4) applied by DOE

Table 1[4]
DOE Evaluation of the Woods Cross Refinery's Petition

1	Disproportionate Structural Impact Metrics		Score
a	Access to capital/credit	0 = Good access (BB- or above credit rating), 5 = Moderate access (rating in B's) 10 = Poor access (C rating or 50% D/E)	[redacted]
b	Other business lines besides refining and marketing	0 = Other Lines, 10 = No Other Lines	[redacted]
c	Local market acceptance of Renewables	0 = Products accepted, 10 = Product not accepted	
	i E10	0 = High acceptance, 5 = Low acceptance 10= No acceptance	[redacted]
	ii E85	Not scored because of small E85 volumes	
	iii Biodiesel	Not available	
d	Percentage of diesel production	0 = D/(G+D) < Industry Avg. 5 = D/(G+D) > Ind. Avg<40%. 10=D/(G+D) > 40%	[redacted]
e	Subject to exceptional state regulations	0 = not subject, 5= Some barriers for compliance	[redacted]

[3] From DOE recommendation for the Woods Cross Refinery transmitted to EPA on April 11, 2018.
[4] The gray-shaded categories were developed as part of the DOE Small Refinery Study, but DOE has chosen not to assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE's explanation regarding why it does not assign scores for the gray-shaded categories.

		10 = subject to exceptional state regulations	
2	**Disproportionate Economic Impact Metrics**		
	a Relative refining margin measure [5]	0 = Above 3-year industry average 5 = Positive, below 3-year industry average 10= Negative	[redacted]
	b Renewable fuel blending (% of production)		
	i Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%	[redacted]
	ii Biodiesel blending (not used)	0 = 1.1% of diesel production, 1 = <1.1%	
	iii Other Advanced Biofuel blending (not used)	0 = some blending, 10 = no blending	
	c In a niche market	0 = niche 5 = moderate niche impact 10 = no niche	[redacted]
	d RINs net revenue or cost [6]	0 = revenue > cost, 10 = revenue < cost	
	Subtotal (average)		[redacted]
	Ranking (subtotal x 0.50)		[redacted]
3	**Viability Metrics**		
	a Compliance cost eliminates efficiency gains (impairment)	0 = no impact on efficiency, 5 = moderate impact, 10 = impact on efficiency	[redacted]
	b Individual special events	0 = no special event, 5 = moderate event, 10 = special event impacting viability	[redacted]
	c Compliance costs likely to lead to shut down	0 = not likely to shut down, 10 = likely to shut down	[redacted]
	Subtotal (average)		[redacted]
	Ranking (subtotal x 0.50)		[redacted]

EPA's analysis extends beyond the metrics DOE applies in assessing potential DEH. EPA considers all of the information submitted by a petitioner when it considers "other economic factors" in evaluating a small refinery petition. For example, EPA considers the information submitted by the petitioner that documents or explains relevant economic conditions or business decisions by the petitioner. EPA may also consider other publicly available information regarding the petitioner that informs EPA's evaluation regarding how "other economic factors" may cause a small refinery to experience DEH if required to comply with its RFS obligations.

HFRM submitted a petition to EPA dated March 16, 2018, for an extension of the RFS small refinery exemption for the Woods Cross Refinery for 2017. In support of its petition,

[5] DOE has calculated refining industry gross margins and net margins for 2014, 2015, and 2016, based on public data. The average industry gross and net margins for these three years were \$11.40/bbl and \$6.52/bbl, respectively (net margin only includes direct operating expenses, it does not include financial expenses such as interest, and depreciation/amortization). HFWCR's average gross margin and net margin (excluding financial expenses) for 2014-2016 were [redacted] and [redacted], respectively. (Woods Cross Operating Data, and DOE Form PI-588, Sec. 3.6,7, submitted with petition dated March 16, 2018.)

[6] DOE has not scored this category for any hardship petition evaluations.

HFRM submitted financial and other information, including a completed DOE survey form PI-588, which specified the factors that HFRM believes demonstrate DEH. The petition stated that HFWCR [redacted][7], [redacted][8] The petition also stated tha [redacted].[9]

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption from compliance with its RFS requirements based on a demonstration by the small refinery of a DEH. As described above, HFRM's petition presents financial information that documents [redacted] along with other metrics of poor economic performance in 2017. Based on our review of all the available information about the Woods Cross Refinery, and our consultation with DOE, EPA has concluded that the Woods Cross Refinery will experience DEH that can be relieved in whole or in part by removing its RFS compliance obligations for 2017. Therefore, EPA is granting HFRM's request for a temporary extension of the Woods Cross Refinery's small refinery RFS hardship exemption for 2017.

EPA's decision is consistent with [redacted] Woods Cross Refinery [redacted] EPA has decided to grant 100% relief. As explained above, this decision is appropriate under the statutory authority to consult with DOE, consider the 2011 DOE study, and "other economic factors" and it is consistent with the case law recognizing EPA's independent authority in deciding whether to grant or deny RFS small refinery exemption petitions.[10]

This decision is a final agency action for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1), judicial review of this final agency action may be sought in the United States Court of Appeals for the appropriate circuit. This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.

---

[7] 2017 Compliance Cost Spreadsheet, submitted with Petition, March 16, 2018.
[8] Petition at 2.
[9] Petition at 3.
[10] *Sinclair*, 874 F.3d at 1166; *See also Hermes Consol., LLC v. EPA*, 787 F.3d 568, 574-575 (D.C. Cir. 2015); *Lion Oil Co. v. EPA*, 792 F.3d 978, 982-983 (8th Cir. 2015).

Grant of Request for Extension of Small Refinery Temporary Exemption Under the Renewable Fuel Standard Program For Andeavor's

(b) (4)

Contains Information Claimed by Andeavor To be Confidential Business Information

Office of Transportation and Air Quality

EPA received a petition from Andeavor dated December 20, 2017, for a one-year extension of the Renewable Fuel Standard (RFS) small refinery exemption for Andeavor's (b) (4) in 2016. For the reasons described herein, EPA is granting Andeavor's request for an extension of the (b) (4) RFS small refinery exemption for 2016.

EPA notes that the (b) (4) CAA 211(o)(9)(A)(i); 40 CFR 80.1441(a)(1). (b) (4) A refinery may petition for such hardship relief "at any time," CAA 211(o)(9)(B)(i); 40 CFR 80.1441(e)(2), so long as the refinery is a qualifying small refinery. To "qualify for a extension of its small refinery exemption," a refinery's average aggregate daily crude oil throughput must not exceed 75,000 barrels per day "for the most recent full calendar year prior to seeking an extension as well as for the year for which an exemption is sought." 40 CFR 80.1441(e)(2)(iii). EPA finds that the (b) (4) qualifies to petition for hardship relief because its crude oil throughput did not exceed 75,000 barrels per day in 2016 (the year for which it seeks an extension) as well as for 2015 (the prior year).[1]

Section 211(o)(9) of the Clean Air Act (CAA) authorizes the Administrator to temporarily exempt small refineries from their renewable fuel volume obligations under the RFS program on the basis of a finding of "disproportionate economic hardship" (DEH). The statute directs EPA, in consultation with the Department of Energy (DOE), to consider the (DOE) Small Refinery Study and "other economic factors" in evaluating small refinery exemption petitions, but CAA section 211(o)(9) leaves the definition of DEH to the Administrator's discretion for purposes of implementing this exemption provision.

After evaluating information submitted by the petitioner, DOE provides a recommendation to EPA on whether a refinery merits exemption from the RFS. As described in its study, DOE assesses the potential for DEH at a refinery on the basis of two sets of metrics. One set assesses structural and economic conditions that could disproportionately impact the refinery (described as "disproportionate impacts" for purposes of DOE's scoring metrics, and also described as "structural" factors or conditions here). The other set assesses economic factors that could cause viability concerns (described as "viability" for purposes of DOE's scoring metrics, and also described as "economic" factors or conditions here).

In previous year decisions, DOE and EPA considered that DEH exists only when a refinery experiences both disproportionate impacts and viability impairment. In response to concerns that the two agencies' threshold for establishing DEH was too stringent, Congress clarified to DOE that DEH can exist if DOE finds that a small refinery is experiencing *either*

[1] (b) (4)

disproportionate impacts *or* viability impairment. If so, Congress directed DOE to recommend a 50 percent exemption from the RFS. This was relayed in language included in an explanatory statement accompanying the 2016 Appropriations Act that stated: "If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner."[2] Congress then directed EPA to follow DOE's recommendation.[3] [redacted] the (b) (4) [redacted] (b) (4) (b) (4) (b) (4) (b) (4)

For the purposes of implementing CAA section 211(o)(9) for 2016 small refinery exemption decisions, EPA has determined that DEH can exist on the basis of adverse structural conditions alone. A difficult year for the refining industry as a whole may exacerbate economic problems for small refineries that face disproportionate impacts. Throughout the industry, refineries reported lower net refining margins in 2016. This industry-wide downward trend can result in tangible effects on small refineries with adverse structural conditions, including diminished refining margins, reduced profitability, cash flow limitations that can hinder its ability to acquire renewable fuel credits (Renewable Identification Numbers, or RINs) for compliance, and the potential to impair refinery operations. In addition, small refineries sometimes lack access to capital or credit that can also be necessary to achieve compliance.

In its industry-wide analysis, DOE has found that poor access to capital and credit, lack of other business lines, and high diesel production compared to the industry average can suggest a disproportionate structural impact. Poor refining margins, limited ability to blend ethanol, and market competition can suggest a disproportionate economic impact. As noted above, DOE scores the disproportionate structural and economic impacts together as half of its DEH analysis. Here, EPA acknowledges that [redacted] the (b) (4) [redacted] EPA's review of DOE's analysis is in accord with this conclusion. These conditions disadvantage the refinery relative to larger refineries that may not face similar structural challenges.

DOE also assessed economic factors as the second component of DEH. Here, EPA acknowledges tha [redacted] the (b) (4) [redacted][4] [redacted] the (b) (4) [redacted]

[2] Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015). The Explanatory Statement is available at: https://rules.house.gov/bill/114/hr-2029-sa.
[3] Consolidated Appropriations Act, 2017, Pub. L. No. 115-31 (2017); *See also* Senate Report 114-281 ("When making decisions about small refinery exemptions under the RFS program, the Agency is directed to follow DOE's recommendations which are to be based on the original 2011 Small Refinery Exemption Study prepared for Congress and the conference report to division D of the Consolidated Appropriations Act of 2016.").
[4] From DOE recommendation for the (b) (4) transmitted to EPA on March 23, 2018.

Table 1[5]
DOE Evaluation of Andeavor's Petition for the (b) (4)

		Metric	Criteria	Score
1		**Disproportionate Structural Impact Metrics**		Score
	a	Access to capital/credit	0 = Good access (BB- or above credit rating), 5 = Moderate access (rating in B's) 10 = Poor access (C rating or 50% D/E)	[redacted]
	b	Other business lines besides refining and marketing	0 = Other Lines, 10 = No Other Lines	[redacted]
	c	Local market acceptance of Renewables	0 = Products accepted, 10 = Product not accepted	
	i	E10	0 = High acceptance, 5 = Low acceptance 10= No acceptance	[redacted]
	ii	E85	Not scored because of small E85 volumes	
	iii	Biodiesel	Not available	
	d	Percentage of diesel production	0 = D/(G+D) < Industry Avg. 5 = D/(G+D) > Ind. Avg<40%. 10=D/(G+D) > 40%	[redacted]
	e	Subject to exceptional state regulations	0 = not subject, 5= Some barriers for compliance 10 = subject to exceptional state regulations	[redacted]
2		**Disproportionate Economic Impact Metrics**		
	a	Relative refining margin measure [6]	0 = Above 3 year industry average 5 = Positive, below 3 year industry average 10= Negative	[redacted]
	b	Renewable fuel blending (% of production)		
	i	Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%	[redacted]
	ii	Biodiesel blending (not used)	0 = 1.1% of diesel production, 1 = <1.1%	
	iii	Other Advanced Biofuel blending (not used)	0 = some blending, 10 = no blending	
	c	In a niche market	0 = niche 5 = moderate niche impact 10 = no niche	[redacted]
	d	RINs net revenue or cost [7]	0 = revenue > cost, 10 = revenue < cost	
		Subtotal (average)		[redacted]
		Ranking (subtotal x 0.50)		

[5] The gray-shaded categories were developed as part of the DOE Small Refinery Study, but DOE has chosen not to assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE's explanation regarding why it does not assign scores for the gray-shaded categories.
[6] DOE has calculated refining industry gross margins and net margins for 2014, 2015, and 2016, based on public data. The average industry gross and net margins for these three years were $11.40/barrel and $6.52/barrel, respectively (net margin only includes direct operating expenses, it does not include financial expenses such as interest, and depreciation/amortization). (b) (4) so Andeavor (b) (4) (b) (4) The (b) (4) average gross margin and net margin (excluding financial expenses) for 2016 were (b) (4) and (b) (4) , respectively.
[7] DOE has not scored this category for any hardship petition evaluations.

3	Viability Metrics		
a	Compliance cost eliminates efficiency gains (impairment)	0 = no impact on efficiency, 5 = moderate impact, 10 = impact on efficiency	[redacted]
b	Individual special events	0 = no special event, 5 = moderate event, 10 = special event impacting viability	[redacted]
c	Compliance costs likely to lead to shut down	0 = not likely to shut down, 10 = likely to shut down	[redacted]
	Subtotal (average)		[redacted]
	Ranking (subtotal x 0.50)		[redacted]

EPA's analysis extends beyond the metrics DOE applies in assessing potential DEH. EPA considers all of the information submitted by a petitioner when it considers "other economic factors" in evaluating a small refinery petition. For example, EPA considers the information submitted by the petitioner that documents or explains relevant economic conditions or business decisions by the petitioner. EPA may also consider other publicly available information regarding the petitioner that informs EPA's evaluation regarding how "other economic factors" may cause a small refinery to experience DEH if required to comply with its RFS obligations.

Andeavor submitted a petition to EPA on December 20, 2017, for an extension of the RFS small refinery exemption for the (b) (4) [redacted] for 2016. In support of its petition, Andeavor submitted financial and other information, including a completed DOE survey form PI-588, which specified the factors that Andeavor believes demonstrate DEH. Andeavor stated that (b) (4) [redacted].[8] Andeavor's PI-588 form indicated that the (b) (4) [redacted][9]

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption from compliance with its RFS requirements based on a demonstration by the small refinery of DEH. As described above, Andeavor's petition presents information demonstrating unfavorable structural conditions. Andeavor's petition also presents information that documents structural difficulties in 2016. Based on our review of all of the available information about the (b) (4) [redacted] and our consultation with DOE, EPA has concluded that the (b) (4) [redacted] will experience DEH that can be relieved in whole or in part by removing its RFS obligations for 2016. Therefore, EPA is granting Andeavor's request for a temporary extension of the (b) (4) [redacted] small refinery RFS hardship exemption for 2016.

EPA's decision is consistent with (b)(4) applied by DOE [redacted] the (b) (4) [redacted] (b)(4) applied by DOE [redacted] (b)(4) applied by DOE [redacted] EPA has decided to grant 100%

[8] Andeavor petition at 6.

[9] Andeavor PI-588 form, item 3.7. (b) (4) [redacted] (b) (4) [redacted]

relief. As explained above, this decision is appropriate under the statutory authority to consult with DOE, consider the 2011 DOE study, and "other economic factors" and it is consistent with the case law recognizing EPA's independent authority in deciding whether to grant or deny RFS small refinery exemption petitions.[10]

This decision is a final agency action for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1), judicial review of this final agency action may be sought in the United States Court of Appeals for the appropriate circuit. This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.

[10] *Sinclair*, 874 F.3d at 1166; *See also Hermes Consol., LLC v. EPA*, 787 F.3d 568, 574-575 (D.C. Cir. 2015); *Lion Oil Co. v. EPA*, 792 F.3d 978, 982-983 (8th Cir. 2015).

Grant of Request for Extension of Small Refinery Temporary Exemption Under the Renewable Fuel Standards Program For Andeavor's

(b) (4)

Contains Information Claimed by Andeavor To be Confidential Business Information

Office of Transportation and Air Quality

EPA received a petition from Andeavor dated December 20, 2017, for a one-year extension of the Renewable Fuel Standard (RFS) small refinery exemption for Andeavor's (b) (4) in 2016. For the reasons described herein, EPA is granting Andeavor's request for an extension of the (b) (4) RFS small refinery exemption for 2016.

Section 211(o)(9) of the Clean Air Act (CAA) authorizes the Administrator to temporarily exempt small refineries from their renewable fuel volume obligations under the RFS program on the basis of a finding of "disproportionate economic hardship" (DEH). The statute directs EPA, in consultation with the Department of Energy (DOE), to consider the (DOE) Small Refinery Study and "other economic factors" in evaluating small refinery exemption petitions, but CAA section 211(o)(9) leaves the definition of DEH to the Administrator's discretion for purposes of implementing this exemption provision.

After evaluating information submitted by the petitioner, DOE provides a recommendation to EPA on whether a refinery merits exemption from the RFS. As described in its study, DOE assesses the potential for DEH at a refinery on the basis of two sets of metrics. One set assesses structural and economic conditions that could disproportionately impact the refinery (described as "disproportionate impacts" for purposes of DOE's scoring metrics, and also described as "structural" factors or conditions here). The other set assesses economic factors that could cause viability concerns (described as "viability" for purposes of DOE's scoring metrics, and also described as "economic" factors or conditions here).

In previous year decisions, DOE and EPA considered that DEH exists only when a refinery experiences both disproportionate impacts and viability impairment. In response to concerns that the two agencies' threshold for establishing DEH was too stringent, Congress clarified to DOE that DEH can exist if DOE finds that a small refinery is experiencing *either* disproportionate impacts *or* viability impairment. If so, Congress directed DOE to recommend a 50 percent exemption from the RFS. This was relayed in language included in an explanatory statement accompanying the 2016 Appropriations Act that stated: "If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner."[1] [redacted] (b)(4) applied by DOE the (b) (4) [redacted] (b)(4) applied by DOE the (b) (4) (b) (4) (b) (4) (b) (4)

For the purposes of implementing CAA section 211(o)(9) for 2016 small refinery exemption decisions, EPA has determined that DEH can exist on the basis of adverse structural conditions alone. A difficult year for the refining industry as a whole may exacerbate economic problems for small refineries that face disproportionate impacts. Throughout the industry, refineries reported lower net refining margins in 2016. This industry-wide downward trend can result in tangible effects on small refineries with adverse structural conditions, including diminished refining margins, reduced profitability, cash flow limitations that can hinder its ability to acquire renewable fuel credits (Renewable Identification Numbers, or RINs) for

[1] Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015). The Explanatory Statement is available at: https://rules.house.gov/bill/114/hr-2029-sa.

compliance, and the potential to impair refinery operations. In addition, small refineries sometimes lack access to capital or credit that can also be necessary to achieve compliance.

In its industry-wide analysis, DOE has found that poor access to capital and credit, lack of other business lines, and high diesel production compared to the industry average can suggest a disproportionate structural impact. Poor refining margins, limited ability to blend ethanol, and market competition can suggest a disproportionate economic impact. As noted above, DOE scores the disproportionate structural and economic impacts together as half of its DEH analysis. Here, EPA acknowledges tha (b)(4) applied by DOE the (b) (4) (b)(4) applied by DOE [redacted] EPA's review of DOE's analysis is in accord with this conclusion. These conditions disadvantage the refinery relative to larger refineries that may not face similar structural challenges.

DOE also assessed economic factors as the second component of DEH. Here, EPA acknowledges that (b)(4) applied by DOE the (b) (4) (b)(4) applied by DOE [redacted] the (b) (4) (b)(4) applied by DOE

Table 1[3]
DOE Evaluation of Andeavor's Petition for the (b) (4)

1	**Disproportionate Structural Impact Metrics**		Score
a	Access to capital/credit	0 = Good access (BB- or above credit rating), 5 = Moderate access (rating in B's) 10 = Poor access (C rating or 50% D/E)	[redacted]
b	Other business lines besides refining and marketing	0 = Other Lines, 10 = No Other Lines	[redacted]
c	Local market acceptance of Renewables	0 = Products accepted, 10 = Product not accepted	
	i E10	0 = High acceptance, 5 = Low acceptance 10= No acceptance	[redacted]
	ii E85	Not scored because of small E85 volumes	
	iii Biodiesel	Not available	
d	Percentage of diesel production	0 = D/(G+D) < Industry Avg. 5 = D/(G+D) > Ind. Avg<40%. 10=D/(G+D) > 40%	[redacted]
e	Subject to exceptional state regulations	0 = not subject, 5= Some barriers for compliance 10 = subject to exceptional state regulations	[redacted]
2	**Disproportionate Economic Impact Metrics**		

[2] From DOE recommendation for the (b) (4) transmitted to EPA on February 20, 2018.
[3] The gray-shaded categories were developed as part of the DOE Small Refinery Study, but DOE has chosen not to assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE's explanation regarding why it does not assign scores for the gray-shaded categories.

a	Relative refining margin measure [4]	0 = Above 3 year industry average 5 = Positive, below 3 year industry average 10= Negative	[redacted]
b	Renewable fuel blending (% of production)		
	i Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%	[redacted]
	ii Biodiesel blending (not used)	0 = 1.1% of diesel production, 1 = <1.1%	
	iii Other Advanced Biofuel blending (not used)	0 = some blending, 10 = no blending	
c	In a niche market	0 = niche 5 = moderate niche impact 10 = no niche	[redacted]
d	RINs net revenue or cost [5]	0 = revenue > cost, 10 = revenue < cost	
	Subtotal (average)		[redacted]
	Ranking (subtotal x 0.50)		
3	**Viability Metrics**		
a	Compliance cost eliminates efficiency gains (impairment)	0 = no impact on efficiency, 5 = moderate impact, 10 = impact on efficiency	[redacted]
b	Individual special events	0 = no special event, 5 = moderate event, 10 = special event impacting viability	[redacted]
c	Compliance costs likely to lead to shut down	0 = not likely to shut down, 10 = likely to shut down	[redacted]
	Subtotal (average)		[redacted]
	Ranking (subtotal x 0.50)		

DOE's analysis recommending a 50 percent waiver is only one factor in EPA's evaluation regarding whether to grant or deny a petition for a small refinery. EPA's analysis extends beyond the metrics DOE applies in assessing potential DEH. EPA considers all of the information submitted by a petitioner when it considers "other economic factors" in evaluating a small refinery petition. For example, EPA considers the information submitted by the petitioner that documents or explains relevant economic conditions or business decisions by the petitioner. EPA may also consider other publicly available information regarding the petitioner that informs EPA's evaluation regarding how "other economic factors" may cause a small refinery to experience DEH if required to comply with its RFS obligations.

Andeavor submitted a petition to EPA on December 20, 2017, for an extension of the RFS small refinery exemption for the (b) (4) for 2016. In support of its petition, Andeavor submitted a completed DOE survey form PI-588, which specified the factors that Andeavor believes demonstrate DEH. The petition stated that Andeavor's (b) (4)

[4] DOE has calculated refining industry gross margins and net margins for 2014, 2015, and 2016, based on public data. The average industry gross and net margins for these three years were \$11.40/bbl and \$6.52/bbl, respectively (net margin only includes direct operating expenses, it does not include financial expenses such as interest, and depreciation/amortization). The (b) (4) average gross margin and net margin (excluding financial expenses) for 2014-2016 were (b) (4) and (b) (4), respectively.

[5] DOE has not scored this category for any hardship petition evaluations.

(b) (4)

[6] Andeavor's PI-588 form indicated that the (b) (4)

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption from compliance with its RFS requirements based on a demonstration by the small refinery of a DEH. As described above, Andeavor's petition presents information that documents structural difficulties in 2016. Based on our review of all of the available information about the (b) (4) and our consultation with DOE, EPA has concluded that the (b) (4) will experience DEH that can be relieved in whole or in part by removing its RFS obligations for 2016. Therefore, EPA is granting Andeavor's request for a temporary extension of the (b) (4) small refinery RFS hardship exemption for 2016.

EPA's decision is consistent with (b)(4) applied by DOE [redacted] (b) (4) (b)(4) applied by DOE [redacted] (b)(4) applied by DOE [redacted] EPA has decided to grant 100% relief. As explained above, this decision is appropriate under the statutory authority to consult with DOE, consider the 2011 DOE study, and "other economic factors" and it is consistent with the case law recognizing EPA's independent authority in deciding whether to grant or deny RFS small refinery exemption petitions.[8]

This decision is a final agency action for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1), judicial review of this final agency action may be sought in the United States Court of Appeals for the appropriate circuit. This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.

---

[6] Andeavor petition at 2.
[7] Andeavor PI-588 form, items 3.7 and 4.13.
[8] *Sinclair*, 874 F.3d at 1166; *See also Hermes Consol., LLC v. EPA*, 787 F.3d 568, 574-575 (D.C. Cir. 2015); *Lion Oil Co. v. EPA*, 792 F.3d 978, 982-983 (8th Cir. 2015).

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 9 2018

OFFICE OF
AIR AND RADIATION

Mr. Keith Casey
EVP, Commercial and Value Chain
Andeavor
19100 Ridgewood Parkway
San Antonio, Texas 78259

Dear Mr. Casey:

I am writing in response to the petition from Andeavor for a one-year extension of the small refinery exemption for 2016 from the requirements of the renewable fuel standard (RFS) program for Andeavor's refinery in (b) (4) As you know, the Clean Air Act (CAA) provided that small refineries would be temporarily exempt from the RFS requirements through December 31, 2010. The (b) (4) qualified as a small refinery that was covered by this temporary exemption.

Pursuant to CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2) small refineries may petition EPA to extend the temporary RFS exemption on the basis that compliance with the RFS requirements will cause "disproportionate economic hardship." Pursuant to these provisions, Andeavor submitted a petition to EPA dated December 20, 2017 to extend the exemption for the (b) (4) for 2016.

Based on the information submitted in your petition, and after consultation with the Department of Energy, EPA has decided to grant a one-year extension of Andeavor's RFS small refinery temporary exemption. This means that from January 1, 2016 through December 31, 2016, the (b) (4) gasoline and diesel production are not subject to the percentage standards of 40 CFR 80.1405, and Andeavor is not subject to the requirements of an obligated party for fuel produced at the (b) (4) (b) (4) during that period.

If you have any questions, please contact Byron Bunker of my staff at 734-214-4155.

Sincerely,

Ben Hengst, for

Christopher Grundler, Director
Office of Transportation and Air Quality

Enclosure – Decision Document

Grant of Request for Extension of Small Refinery Temporary Exemption Under the Renewable Fuel Standards Program For Andeavor's

(b) (4)

Contains Information Claimed by Andeavor To be Confidential Business Information

Office of Transportation and Air Quality

EPA received a petition from Andeavor dated December 20, 2017, for a one-year extension of the Renewable Fuel Standard (RFS) small refinery exemption for Andeavor's (b) (4) in 2016. For the reasons described herein, EPA is granting Andeavor's request for an extension of the (b) (4) RFS small refinery exemption for 2016.

Section 211(o)(9) of the Clean Air Act (CAA) authorizes the Administrator to temporarily exempt small refineries from their renewable fuel volume obligations under the RFS program on the basis of a finding of "disproportionate economic hardship" (DEH). The statute directs EPA, in consultation with the Department of Energy (DOE), to consider the (DOE) Small Refinery Study and "other economic factors" in evaluating small refinery exemption petitions, but CAA section 211(o)(9) leaves the definition of DEH to the Administrator's discretion for purposes of implementing this exemption provision.

After evaluating information submitted by the petitioner, DOE provides a recommendation to EPA on whether a refinery merits exemption from the RFS. As described in its study, DOE assesses the potential for DEH at a refinery on the basis of two sets of metrics. One set assesses structural and economic conditions that could disproportionately impact the refinery (described as "disproportionate impacts" for purposes of DOE's scoring metrics, and also described as "structural" factors or conditions here). The other set assesses economic factors that could cause viability concerns (described as "viability" for purposes of DOE's scoring metrics, and also described as "economic" factors or conditions here).

In previous year decisions, DOE and EPA considered that DEH exists only when a refinery experiences both disproportionate impacts and viability impairment. In response to concerns that the two agencies' threshold for establishing DEH was too stringent, Congress clarified to DOE that DEH can exist if DOE finds that a small refinery is experiencing *either* disproportionate impacts *or* viability impairment. If so, Congress directed DOE to recommend a 50 percent exemption from the RFS. This was relayed in language included in an explanatory statement accompanying the 2016 Appropriations Act that stated: "If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner."[1] (b)(4) applied by DOE (b) (4) (b)(4) applied by DOE [redacted] the (b) (4) (b) (4) (b) (4) (b) (4)

For the purposes of implementing CAA section 211(o)(9) for 2016 small refinery exemption decisions, EPA has determined that DEH can exist on the basis of adverse structural conditions alone. A difficult year for the refining industry as a whole may exacerbate economic problems for small refineries that face disproportionate impacts. Throughout the industry, refineries reported lower net refining margins in 2016. This industry-wide downward trend can result in tangible effects on small refineries with adverse structural conditions, including diminished refining margins, reduced profitability, cash flow limitations that can hinder its ability to acquire renewable fuel credits (Renewable Identification Numbers, or RINs) for

[1] Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015). The Explanatory Statement is available at: https://rules.house.gov/bill/114/hr-2029-sa.

compliance, and the potential to impair refinery operations. In addition, small refineries sometimes lack access to capital or credit that can also be necessary to achieve compliance.

In its industry-wide analysis, DOE has found that poor access to capital and credit, lack of other business lines, and high diesel production compared to the industry average can suggest a disproportionate structural impact. Poor refining margins, limited ability to blend ethanol, and market competition can suggest a disproportionate economic impact. As noted above, DOE scores the disproportionate structural and economic impacts together as half of its DEH analysis. Here, EPA acknowledges tha [redacted] that the (b) (4) [redacted] EPA's review of DOE's analysis is in accord with this conclusion. These conditions disadvantage the refinery relative to larger refineries that may not face similar structural challenges.

DOE also assessed economic factors as the second component of DEH. Here, EPA acknowledges that [redacted] the (b) (4) [redacted] the (b) (4) [redacted]

Table 1[3]
DOE Evaluation of Andeavor's Petition for the (b) (4)

			Score
1	**Disproportionate Structural Impact Metrics**		Score
a	Access to capital/credit	0 = Good access (BB- or above credit rating), 5 = Moderate access (rating in B's) 10 = Poor access (C rating or 50% D/E)	[redacted]
b	Other business lines besides refining and marketing	0 = Other Lines, 10 = No Other Lines	[redacted]
c	Local market acceptance of Renewables	0 = Products accepted, 10 = Product not accepted	
	i E10	0 = High acceptance, 5 = Low acceptance 10= No acceptance	[redacted]
	ii E85	Not scored because of small E85 volumes	
	iii Biodiesel	Not available	
d	Percentage of diesel production	0 = D/(G+D) < Industry Avg. 5 = D/(G+D) > Ind. Avg<40%. 10=D/(G+D) > 40%	[redacted]
e	Subject to exceptional state regulations	0 = not subject, 5= Some barriers for compliance 10 = subject to exceptional state regulations	[redacted]
2	**Disproportionate Economic Impact Metrics**		

[2] From DOE recommendation for the (b) (4) transmitted to EPA on February 20, 2018.
[3] The gray-shaded categories were developed as part of the DOE Small Refinery Study, but DOE has chosen not to assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE's explanation regarding why it does not assign scores for the gray-shaded categories.

a	Relative refining margin measure [4]	0 = Above 3 year industry average 5 = Positive, below 3 year industry average 10= Negative	[redacted]
b	Renewable fuel blending (% of production)		
	i Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%	[redacted]
	ii Biodiesel blending (not used)	0 = 1.1% of diesel production, 1 = <1.1%	
	iii Other Advanced Biofuel blending (not used)	0 = some blending, 10 = no blending	
c	In a niche market	0 = niche 5 = moderate niche impact 10 = no niche	[redacted]
d	RINs net revenue or cost [5]	0 = revenue > cost, 10 = revenue < cost	
	Subtotal (average)		[redacted]
	Ranking (subtotal x 0.50)		
3	**Viability Metrics**		
a	Compliance cost eliminates efficiency gains (impairment)	0 = no impact on efficiency, 5 = moderate impact, 10 = impact on efficiency	[redacted]
b	Individual special events	0 = no special event, 5 = moderate event, 10 = special event impacting viability	[redacted]
c	Compliance costs likely to lead to shut down	0 = not likely to shut down, 10 = likely to shut down	[redacted]
	Subtotal (average)		[redacted]
	Ranking (subtotal x 0.50)		

DOE's analysis recommending a 50 percent waiver is only one factor in EPA's evaluation regarding whether to grant or deny a petition for a small refinery. EPA's analysis extends beyond the metrics DOE applies in assessing potential DEH. EPA considers all of the information submitted by a petitioner when it considers "other economic factors" in evaluating a small refinery petition. For example, EPA considers the information submitted by the petitioner that documents or explains relevant economic conditions or business decisions by the petitioner. EPA may also consider other publicly available information regarding the petitioner that informs EPA's evaluation regarding how "other economic factors" may cause a small refinery to experience DEH if required to comply with its RFS obligations.

Andeavor submitted a petition to EPA on December 20, 2017, for an extension of the RFS small refinery exemption for the (b) (4) for 2016. In support of its petition, Andeavor submitted a completed DOE survey form PI-588, which specified the factors that Andeavor believes demonstrate DEH. The petition stated that Andeavor's (b) (4)

[4] DOE has calculated refining industry gross margins and net margins for 2014, 2015, and 2016, based on public data. The average industry gross and net margins for these three years were \$11.40/bbl and \$6.52/bbl, respectively (net margin only includes direct operating expenses, it does not include financial expenses such as interest, and depreciation/amortization). The (b) (4) average gross margin and net margin (excluding financial expenses) for 2014-2016 were (b) (4) and (b) (4) , respectively.

[5] DOE has not scored this category for any hardship petition evaluations.

(b) (4)

[6] Andeavor's PI-588 form indicated that the (b) (4)

[7]

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption from compliance with its RFS requirements based on a demonstration by the small refinery of a DEH. As described above, Andeavor's petition presents information that documents structural difficulties in 2016. Based on our review of all of the available information about the (b) (4), applied by DOE and our consultation with DOE, EPA has concluded that the (b) (4) will experience DEH that can be relieved in whole or in part by removing its RFS obligations for 2016. Therefore, EPA is granting Andeavor's request for a temporary extension of the (b) (4) small refinery RFS hardship exemption for 2016.

EPA's decision is consistent with (b)(4) applied by DOE the (b) (4) (b)(4) applied by DOE (b)(4) applied by DOE EPA has decided to grant 100% relief. As explained above, this decision is appropriate under the statutory authority to consult with DOE, consider the 2011 DOE study, and "other economic factors" and it is consistent with the case law recognizing EPA's independent authority in deciding whether to grant or deny RFS small refinery exemption petitions.[8]

This decision is a final agency action for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1), judicial review of this final agency action may be sought in the United States Court of Appeals for the appropriate circuit. This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.

---

[6] Andeavor petition at 2.

[7] Andeavor PI-588 form, items 3.7 and 4.13.

[8] *Sinclair*, 874 F.3d at 1166; *See also Hermes Consol., LLC v. EPA*, 787 F.3d 568, 574-575 (D.C. Cir. 2015); *Lion Oil Co. v. EPA*, 792 F.3d 978, 982-983 (8th Cir. 2015).

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 9 2018

OFFICE OF
AIR AND RADIATION

Mr. Keith Casey
EVP, Commercial and Value Chain
Andeavor
19100 Ridgewood Parkway
San Antonio, Texas 78259

Dear Mr. Casey:

I am writing in response to the petition from Andeavor for a one-year extension of the small refinery exemption for 2016 from the requirements of the renewable fuel standard (RFS) program for Andeavor's refinery in (b) (4) As you know, the Clean Air Act (CAA) provided that small refineries would be temporarily exempt from the RFS requirements through December 31, 2010. The (b) (4) qualified as a small refinery that was covered by this temporary exemption.

Pursuant to CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2) small refineries may petition EPA to extend the temporary RFS exemption on the basis that compliance with the RFS requirements will cause "disproportionate economic hardship." Pursuant to these provisions, Andeavor submitted a petition to EPA dated December 20, 2017 to extend the exemption for the (b) (4) for 2016.

Based on the information submitted in your petition, and after consultation with the Department of Energy, EPA has decided to grant a one-year extension of Andeavor's RFS small refinery temporary exemption. This means that from January 1, 2016 through December 31, 2016, the (b) (4) gasoline and diesel production are not subject to the percentage standards of 40 CFR 80.1405, and Andeavor is not subject to the requirements of an obligated party for fuel produced at the (b) (4) (b) (4) during that period.

If you have any questions, please contact Byron Bunker of my staff at 734-214-4155.

Sincerely,

Ben Hengst, for

Christopher Grundler, Director
Office of Transportation and Air Quality

Enclosure – Decision Document

Grant of Request for Extension of Small Refinery Temporary Exemption Under the Renewable Fuel Standards Program For Andeavor's

(b) (4)

Contains Information Claimed by Andeavor To be Confidential Business Information

Office of Transportation and Air Quality

EPA received a petition from Andeavor dated December 20, 2017, for a one-year extension of the Renewable Fuel Standard (RFS) small refinery exemption for Andeavor's (b) (4) [redacted] in 2016. For the reasons described herein, EPA is granting Andeavor's request for an extension of the (b) (4) [redacted] RFS small refinery exemption for 2016.

Section 211(o)(9) of the Clean Air Act (CAA) authorizes the Administrator to temporarily exempt small refineries from their renewable fuel volume obligations under the RFS program on the basis of a finding of "disproportionate economic hardship" (DEH). The statute directs EPA, in consultation with the Department of Energy (DOE), to consider the (DOE) Small Refinery Study and "other economic factors" in evaluating small refinery exemption petitions, but CAA section 211(o)(9) leaves the definition of DEH to the Administrator's discretion for purposes of implementing this exemption provision.

After evaluating information submitted by the petitioner, DOE provides a recommendation to EPA on whether a refinery merits exemption from the RFS. As described in its study, DOE assesses the potential for DEH at a refinery on the basis of two sets of metrics. One set assesses structural and economic conditions that could disproportionately impact the refinery (described as "disproportionate impacts" for purposes of DOE's scoring metrics, and also described as "structural" factors or conditions here). The other set assesses economic factors that could cause viability concerns (described as "viability" for purposes of DOE's scoring metrics, and also described as "economic" factors or conditions here).

In previous year decisions, DOE and EPA considered that DEH exists only when a refinery experiences both disproportionate impacts and viability impairment. In response to concerns that the two agencies' threshold for establishing DEH was too stringent, Congress clarified to DOE that DEH can exist if DOE finds that a small refinery is experiencing *either* disproportionate impacts *or* viability impairment. If so, Congress directed DOE to recommend a 50 percent exemption from the RFS. This was relayed in language included in an explanatory statement accompanying the 2016 Appropriations Act that stated: "If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner."[1] (b)(4) applied by DOE [redacted] (b) [redacted] (b)(4) applied by DOE [redacted] the (b) (4) [redacted] (b) (4) [redacted] (b) (4) [redacted] (b) (4) [redacted]

For the purposes of implementing CAA section 211(o)(9) for 2016 small refinery exemption decisions, EPA has determined that DEH can exist on the basis of adverse structural conditions alone. A difficult year for the refining industry as a whole may exacerbate economic problems for small refineries that face disproportionate impacts. Throughout the industry, refineries reported lower net refining margins in 2016. This industry-wide downward trend can result in tangible effects on small refineries with adverse structural conditions, including diminished refining margins, reduced profitability, cash flow limitations that can hinder its ability to acquire renewable fuel credits (Renewable Identification Numbers, or RINs) for

[1] Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015). The Explanatory Statement is available at: https://rules.house.gov/bill/114/hr-2029-sa.

compliance, and the potential to impair refinery operations. In addition, small refineries sometimes lack access to capital or credit that can also be necessary to achieve compliance.

In its industry-wide analysis, DOE has found that poor access to capital and credit, lack of other business lines, and high diesel production compared to the industry average can suggest a disproportionate structural impact. Poor refining margins, limited ability to blend ethanol, and market competition can suggest a disproportionate economic impact. As noted above, DOE scores the disproportionate structural and economic impacts together as half of its DEH analysis. Here, EPA acknowledges tha [redacted] the (b) (4) [redacted] EPA's review of DOE's analysis is in accord with this conclusion. These conditions disadvantage the refinery relative to larger refineries that may not face similar structural challenges.

DOE also assessed economic factors as the second component of DEH. Here, EPA acknowledges that [redacted] the (b) (4) [redacted] the (b) (4) [redacted]

Table 1[3]
DOE Evaluation of Andeavor's Petition for the (b) (4)

1	Disproportionate Structural Impact Metrics		Score
a	Access to capital/credit	0 = Good access (BB- or above credit rating), 5 = Moderate access (rating in B's) 10 = Poor access (C rating or 50% D/E)	[redacted]
b	Other business lines besides refining and marketing	0 = Other Lines, 10 = No Other Lines	[redacted]
c	Local market acceptance of Renewables	0 = Products accepted, 10 = Product not accepted	
	i E10	0 = High acceptance, 5 = Low acceptance 10= No acceptance	[redacted]
	ii E85	Not scored because of small E85 volumes	
	iii Biodiesel	Not available	
d	Percentage of diesel production	0 = D/(G+D) < Industry Avg. 5 = D/(G+D) > Ind. Avg<40%. 10=D/(G+D) > 40%	[redacted]
e	Subject to exceptional state regulations	0 = not subject, 5= Some barriers for compliance 10 = subject to exceptional state regulations	[redacted]
2	Disproportionate Economic Impact Metrics		

[2] From DOE recommendation for the (b) (4) transmitted to EPA on February 20, 2018.
[3] The gray-shaded categories were developed as part of the DOE Small Refinery Study, but DOE has chosen not to assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE's explanation regarding why it does not assign scores for the gray-shaded categories.

a	Relative refining margin measure [4]	0 = Above 3 year industry average 5 = Positive, below 3 year industry average 10= Negative	[redacted]
b	Renewable fuel blending (% of production)		
	i Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%	[redacted]
	ii Biodiesel blending (not used)	0 = 1.1% of diesel production, 1 = <1.1%	
	iii Other Advanced Biofuel blending (not used)	0 = some blending, 10 = no blending	
c	In a niche market	0 = niche 5 = moderate niche impact 10 = no niche	[redacted]
d	RINs net revenue or cost [5]	0 = revenue > cost, 10 = revenue < cost	
	Subtotal (average)		[redacted]
	Ranking (subtotal x 0.50)		
3	**Viability Metrics**		
a	Compliance cost eliminates efficiency gains (impairment)	0 = no impact on efficiency, 5 = moderate impact, 10 = impact on efficiency	[redacted]
b	Individual special events	0 = no special event, 5 = moderate event, 10 = special event impacting viability	[redacted]
c	Compliance costs likely to lead to shut down	0 = not likely to shut down, 10 = likely to shut down	[redacted]
	Subtotal (average)		[redacted]
	Ranking (subtotal x 0.50)		

DOE's analysis recommending a 50 percent waiver is only one factor in EPA's evaluation regarding whether to grant or deny a petition for a small refinery. EPA's analysis extends beyond the metrics DOE applies in assessing potential DEH. EPA considers all of the information submitted by a petitioner when it considers "other economic factors" in evaluating a small refinery petition. For example, EPA considers the information submitted by the petitioner that documents or explains relevant economic conditions or business decisions by the petitioner. EPA may also consider other publicly available information regarding the petitioner that informs EPA's evaluation regarding how "other economic factors" may cause a small refinery to experience DEH if required to comply with its RFS obligations.

Andeavor submitted a petition to EPA on December 20, 2017, for an extension of the RFS small refinery exemption for the (b) (4) for 2016. In support of its petition, Andeavor submitted a completed DOE survey form PI-588, which specified the factors that Andeavor believes demonstrate DEH. The petition stated that Andeavor's (b) (4)

[4] DOE has calculated refining industry gross margins and net margins for 2014, 2015, and 2016, based on public data. The average industry gross and net margins for these three years were \$11.40/bbl and \$6.52/bbl, respectively (net margin only includes direct operating expenses, it does not include financial expenses such as interest, and depreciation/amortization). The (b) (4) average gross margin and net margin (excluding financial expenses) for 2014-2016 were (b) (4) and (b) (4), respectively.

[5] DOE has not scored this category for any hardship petition evaluations.

(b) (4)

.[6] Andeavor's PI-588 form indicated that the (b) (4)

/

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption from compliance with its RFS requirements based on a demonstration by the small refinery of a DEH. As described above, Andeavor's petition presents information that documents structural difficulties in 2016. Based on our review of all of the available information about the (b) (4) and our consultation with DOE, EPA has concluded that the (b) (4) will experience DEH that can be relieved in whole or in part by removing its RFS obligations for 2016. Therefore, EPA is granting Andeavor's request for a temporary extension of the (b) (4) small refinery RFS hardship exemption for 2016.

EPA's decision is consistent with (b)(4) applied by DOE the (b) (4) (b)(4) applied by DOE (b)(4) applied by DOE EPA has decided to grant 100% relief. As explained above, this decision is appropriate under the statutory authority to consult with DOE, consider the 2011 DOE study, and "other economic factors" and it is consistent with the case law recognizing EPA's independent authority in deciding whether to grant or deny RFS small refinery exemption petitions.[8]

This decision is a final agency action for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1), judicial review of this final agency action may be sought in the United States Court of Appeals for the appropriate circuit. This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.

[6] Andeavor petition at 2.
[7] Andeavor PI-588 form, items 3.7 and 4.13.
[8] *Sinclair*, 874 F.3d at 1166; *See also Hermes Consol., LLC v. EPA*, 787 F.3d 568, 574-575 (D.C. Cir. 2015); *Lion Oil Co. v. EPA*, 792 F.3d 978, 982-983 (8th Cir. 2015).

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

MAR 9 2018

OFFICE OF
AIR AND RADIATION

Mr. Keith Casey
EVP, Commercial and Value Chain
Andeavor
19100 Ridgewood Parkway
San Antonio, Texas 78259

Dear Mr. Casey:

I am writing in response to the petition from Andeavor for a one-year extension of the small refinery exemption for 2016 from the requirements of the renewable fuel standard (RFS) program for Andeavor's refinery in (b) (4) As you know, the Clean Air Act (CAA) provided that small refineries would be temporarily exempt from the RFS requirements through December 31, 2010. The (b) (4) qualified as a small refinery that was covered by this temporary exemption.

Pursuant to CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2) small refineries may petition EPA to extend the temporary RFS exemption on the basis that compliance with the RFS requirements will cause "disproportionate economic hardship." Pursuant to these provisions, Andeavor submitted a petition to EPA dated December 20, 2017 to extend the exemption for the (b) (4) for 2016.

Based on the information submitted in your petition, and after consultation with the Department of Energy, EPA has decided to grant a one-year extension of Andeavor's RFS small refinery temporary exemption. This means that from January 1, 2016 through December 31, 2016, the (b) (4) gasoline and diesel production are not subject to the percentage standards of 40 CFR 80.1405, and Andeavor is not subject to the requirements of an obligated party for fuel produced at the (b) (4) during that period.

If you have any questions, please contact Byron Bunker of my staff at 734-214-4155.

Sincerely,

Ben Hengst, for

Christopher Grundler, Director
Office of Transportation and Air Quality

Enclosure – Decision Document

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 26 2018

OFFICE OF
AIR AND RADIATION

Mr. Keith Casey
EVP, Commercial and Value Chain
Andeavor
19100 Ridgewood Parkway
San Antonio, Texas 78259

Dear Mr. Casey:

I am writing in response to the petition from Andeavor for a one-year extension of the small refinery exemption for 2016 from the requirements of the Renewable Fuel Standard (RFS) program for Andeavor's refinery in (b) (4) . As you know, the Clean Air Act (CAA) provided that small refineries would be temporarily exempt from the RFS requirements through December 31, 2010.

Pursuant to CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2) small refineries may petition EPA to extend the temporary RFS exemption on the basis that compliance with the RFS requirements will cause "disproportionate economic hardship." Pursuant to these provisions, Andeavor submitted a petition to EPA dated December 20, 2017 to extend the exemption for the (b) (4) for 2016.

Based on the information submitted in your petition, and after consultation with the Department of Energy, EPA has decided to grant a one-year extension of Andeavor's RFS small refinery temporary exemption. This means that from January 1, 2016 through December 31, 2016, the (b) (4) gasoline and diesel production are not subject to the percentage standards of 40 CFR 80.1405, and Andeavor is not subject to the requirements of an obligated party for fuel produced at the (b) (4) during that period.

If you have any questions, please contact Byron Bunker of my staff at 734-214-4155.

Sincerely,

Christopher Grundler, Director
Office of Transportation and Air Quality

Enclosure – Decision Document

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 26 2018

OFFICE OF
AIR AND RADIATION

Mr. Keith Casey
EVP, Commercial and Value Chain
Andeavor
19100 Ridgewood Parkway
San Antonio, Texas 78259

Dear Mr. Casey:

I am writing in response to the petition from Andeavor for a one-year extension of the small refinery exemption for 2017 from the requirements of the Renewable Fuel Standard (RFS) program for Andeavor's refinery in (b) (4) (the " (b) (4) "). As you know, the Clean Air Act (CAA) provided that small refineries would be temporarily exempt from the RFS requirements through December 31, 2010.

Pursuant to CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2) small refineries may petition EPA to extend the temporary RFS exemption on the basis that compliance with the RFS requirements will cause "disproportionate economic hardship." Pursuant to these provisions, Andeavor submitted a petition to EPA dated December 20, 2017 to extend the exemption for the (b) (4) for 2017.

Based on the information submitted in your petition, and after consultation with the Department of Energy, EPA has decided to grant a one-year extension of Andeavor's RFS small refinery temporary exemption. This means that from January 1, 2017 through December 31, 2017, the (b) (4) gasoline and diesel production are not subject to the percentage standards of 40 CFR 80.1405, and Andeavor is not subject to the requirements of an obligated party for fuel produced at the (b) (4) during that period.

If you have any questions, please contact Byron Bunker of my staff at 734-214-4155.

Sincerely,

Christopher Grundler, Director
Office of Transportation and Air Quality

Enclosure – Decision Document

Grant of Request for Extension of Small Refinery Temporary Exemption Under the Renewable Fuel Standard Program For Andeavor's (b) (4) (b) (4) Refinery

Contains Information Claimed by Andeavor To be Confidential Business Information

Office of Transportation and Air Quality

EPA received a petition from Andeavor dated December 20, 2017, for a one-year extension of the Renewable Fuel Standard (RFS) small refinery exemption for Andeavor's (b) (4) refinery (the (b) (4)) in 2017. For the reasons described herein, EPA is granting Andeavor's request for an extension of the (b) (4) RFS small refinery exemption for 2017.

EPA notes that the (b) (4) CAA 211(o)(9)(A)(i); 40 CFR 80.1441(a)(1). (b) (4) A refinery may petition for such hardship relief "at any time," CAA 211(o)(9)(B)(i); 40 CFR 80.1441(e)(2), so long as the refinery is a qualifying small refinery. To "qualify for a extension of its small refinery exemption," a refinery's average aggregate daily crude oil throughput must not exceed 75,000 barrels per day "for the most recent full calendar year prior to seeking an extension as well as for the year for which an exemption is sought." 40 CFR 80.1441(e)(2)(iii). EPA finds that the (b) (4) qualifies to petition for hardship relief because its crude oil throughput did not exceed 75,000 barrels per day in 2017 (the year for which it seeks an extension) as well as for 2016 (the prior year).[1]

Section 211(o)(9) of the Clean Air Act (CAA) authorizes the Administrator to temporarily exempt small refineries from their renewable fuel volume obligations under the RFS program on the basis of a finding of "disproportionate economic hardship" (DEH). The statute directs EPA, in consultation with the Department of Energy (DOE), to consider the (DOE) Small Refinery Study and "other economic factors" in evaluating small refinery exemption petitions, but CAA section 211(o)(9) leaves the definition of DEH to the Administrator's discretion for purposes of implementing this exemption provision.

After evaluating information submitted by the petitioner, DOE provides a recommendation to EPA on whether a refinery merits exemption from the RFS. As described in its study, DOE assesses the potential for DEH at a refinery on the basis of two sets of metrics. One set assesses structural and economic conditions that could disproportionately impact the refinery (described as "disproportionate impacts" for purposes of DOE's scoring metrics, and also described as "structural" factors or conditions here). The other set assesses economic factors that could cause viability concerns (described as "viability" for purposes of DOE's scoring metrics, and also described as "economic" factors or conditions here).

In previous year decisions, DOE and EPA considered that DEH exists only when a refinery experiences both disproportionate impacts and viability impairment. In response to concerns that the two agencies' threshold for establishing DEH was too stringent, Congress clarified to DOE that DEH can exist if DOE finds that a small refinery is experiencing *either*

---

[1] (b) (4)

disproportionate impacts *or* viability impairment. If so, Congress directed DOE to recommend a 50 percent exemption from the RFS. This was relayed in language included in an explanatory statement accompanying the 2016 Appropriations Act that stated: "If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner."[2] Congress then directed EPA to follow DOE's recommendation.[3] [redacted] the (b) (4) [redacted] the (b) (4) (b) (4) (b) (4) (b) (4)

For the purposes of implementing CAA section 211(o)(9) for 2017 small refinery exemption decisions, EPA has determined that DEH can exist on the basis of adverse structural conditions alone. A difficult year may exacerbate economic problems for small refineries that face disproportionate impacts, resulting in tangible effects including diminished refining margins, reduced profitability, cash flow limitations that can hinder its ability to acquire renewable fuel credits (Renewable Identification Numbers, or RINs) for compliance, and the potential to impair refinery operations. In addition, small refineries sometimes lack access to capital or credit that can also be necessary to achieve compliance.

In its industry-wide analysis, DOE has found that poor access to capital and credit, lack of other business lines, and high diesel production compared to the industry average can suggest a disproportionate structural impact. Poor refining margins, limited ability to blend ethanol, and market competition can suggest a disproportionate economic impact. As noted above, DOE scores the disproportionate structural and economic impacts together as half of its DEH analysis. Here, EPA acknowledges that [redacted] the (b) (4) [redacted] EPA's review of DOE's analysis is in accord with this conclusion. These conditions disadvantage the refinery relative to larger refineries that may not face similar structural challenges.

DOE also assessed economic factors as the second component of DEH. Here, EPA acknowledges that [redacted] the (b) (4) [redacted] the (b) (4) [redacted]

Table 1[5]
DOE Evaluation of Andeavor's Petition for the (b) (4)

[2] Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015). The Explanatory Statement is available at: https://rules.house.gov/bill/114/hr-2029-sa.
[3] Consolidated Appropriations Act, 2017, Pub. L. No. 115-31 (2017); *See also* Senate Report 114-281 ("When making decisions about small refinery exemptions under the RFS program, the Agency is directed to follow DOE's recommendations which are to be based on the original 2011 Small Refinery Exemption Study prepared for Congress and the conference report to division D of the Consolidated Appropriations Act of 2016.").
[4] From DOE recommendation for the (b) (4) transmitted to EPA on March 23, 2018.
[5] The gray-shaded categories were developed as part of the DOE Small Refinery Study, but DOE has chosen not to assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE's explanation regarding why it does not assign scores for the gray-shaded categories.

				Score
1	**Disproportionate Structural Impact Metrics**			
a	Access to capital/credit		0 = Good access (BB- or above credit rating), 5 = Moderate access (rating in B's) 10 = Poor access (C rating or 50% D/E)	[redacted]
b	Other business lines besides refining and marketing		0 = Other Lines, 10 = No Other Lines	[redacted]
c	Local market acceptance of Renewables		0 = Products accepted, 10 = Product not accepted	
	i	E10	0 = High acceptance, 5 = Low acceptance 10= No acceptance	[redacted]
	ii	E85	Not scored because of small E85 volumes	
	iii	Biodiesel	Not available	
d	Percentage of diesel production		0 = D/(G+D) < Industry Avg. 5 = D/(G+D) > Ind. Avg<40%. 10=D/(G+D) > 40%	[redacted]
e	Subject to exceptional state regulations		0 = not subject, 5= Some barriers for compliance 10 = subject to exceptional state regulations	[redacted]
2	**Disproportionate Economic Impact Metrics**			
a	Relative refining margin measure [6]		0 = Above 3 year industry average 5 = Positive, below 3 year industry average 10= Negative	[redacted]
b	Renewable fuel blending (% of production)			
	i	Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%	[redacted]
	ii	Biodiesel blending (not used)	0 = 1.1% of diesel production, 1 = <1.1%	
	iii	Other Advanced Biofuel blending (not used)	0 = some blending, 10 = no blending	
c	In a niche market		0 = niche 5 = moderate niche impact 10 = no niche	[redacted]
d	RINs net revenue or cost [7]		0 = revenue > cost, 10 = revenue < cost	
	Subtotal (average)			[redacted]
	Ranking (subtotal x 0.50)			
3	**Viability Metrics**			
a	Compliance cost eliminates efficiency gains (impairment)		0 = no impact on efficiency, 5 = moderate impact, 10 = impact on efficiency	[redacted]
b	Individual special events		0 = no special event,	[redacted]

[6] DOE has calculated refining industry gross margins and net margins for 2014, 2015, and 2016, based on public data. The average industry gross and net margins for these three years were $11.40/barrel and $6.52/barrel, respectively (net margin only includes direct operating expenses, it does not include financial expenses such as interest, and depreciation/amortization). The (b) (4) (b) (4) The (b) (4) average gross margin and net margin (excluding financial expenses) for 2016 were (b) (4), respectively.

[7] DOE has not scored this category for any hardship petition evaluations.

		5 = moderate event, 10 = special event impacting viability	
c	Compliance costs likely to lead to shut down	0 = not likely to shut down, 10 = likely to shut down	[redacted]
	Subtotal (average)		[redacted]
	Ranking (subtotal x 0.50)		[redacted]

EPA's analysis extends beyond the metrics DOE applies in assessing potential DEH. EPA considers all of the information submitted by a petitioner when it considers "other economic factors" in evaluating a small refinery petition. For example, EPA considers the information submitted by the petitioner that documents or explains relevant economic conditions or business decisions by the petitioner. EPA may also consider other publicly available information regarding the petitioner that informs EPA's evaluation regarding how "other economic factors" may cause a small refinery to experience DEH if required to comply with its RFS obligations.

Andeavor submitted a petition to EPA on December 20, 2017, for an extension of the RFS small refinery exemption for the (b) (4) for 2017. In support of its petition, Andeavor submitted financial and other information, including a completed DOE survey form PI-588, which specified the factors that Andeavor believes demonstrate DEH. Andeavor stated that (b) (4) [8] Andeavor's PI-588 form indicated that the (b) (4) [9]

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption from compliance with its RFS requirements based on a demonstration by the small refinery of DEH. As described above, Andeavor's petition presents information demonstrating unfavorable structural conditions. Andeavor's petition also presents information that documents structural difficulties in 2017. Based on our review of all of the available information about the (b) (4) , and our consultation with DOE, EPA has concluded that the (b) (4) will experience DEH that can be relieved in whole or in part by removing its RFS obligations for 2017. Therefore, EPA is granting Andeavor's request for a temporary extension of the (b) (4) small refinery RFS hardship exemption for 2017.

EPA's decision is consistent with (b)(4) applied by DOE [redacted] the (b) (4) (b)(4) applied by DOE [redacted] EPA has decided to grant 100% relief. As explained above, this decision is appropriate under the statutory authority to consult with DOE, consider the 2011 DOE study, and "other economic factors" and it is consistent with

[8] Andeavor petition at 6.
[9] Andeavor PI-588 form, item 3.7. (b) (4)

the case law recognizing EPA's independent authority in deciding whether to grant or deny RFS small refinery exemption petitions.[10]

This decision is a final agency action for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1), judicial review of this final agency action may be sought in the United States Court of Appeals for the appropriate circuit. This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.

[10] *Sinclair*, 874 F.3d at 1166; *See also Hermes Consol., LLC v. EPA*, 787 F.3d 568, 574-575 (D.C. Cir. 2015); *Lion Oil Co. v. EPA*, 792 F.3d 978, 982-983 (8th Cir. 2015).

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

[illegible] 2018

OFFICE OF
AIR AND RADIATION

Mr. Keith Casey
EVP, Commercial and Value Chain
Andeavor
19100 Ridgewood Parkway
San Antonio, Texas 78259

Dear Mr. Casey:

I am writing in response to the petition from Andeavor for a one-year extension of the small refinery exemption for 2017 from the requirements of the Renewable Fuel Standard (RFS) program for Andeavor's refinery in [redacted] (the "[redacted]"). As you know, the Clean Air Act (CAA) provided that small refineries would be temporarily exempt from the RFS requirements through December 31, 2010. The [redacted] qualified as a small refinery that was covered by this temporary exemption.

Pursuant to CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2) small refineries may petition EPA to extend the temporary RFS exemption on the basis that compliance with the RFS requirements will cause "disproportionate economic hardship." Pursuant to these provisions, Andeavor submitted a petition to EPA dated December 20, 2017 to extend the exemption for the [redacted] for 2017.

Based on the information submitted in your petition, and after consultation with the Department of Energy, EPA has decided to grant a one-year extension of Andeavor's RFS small refinery temporary exemption. This means that from January 1, 2017 through December 31, 2017, the [redacted] gasoline and diesel production are not subject to the percentage standards of 40 CFR 80.1405, and Andeavor is not subject to the requirements of an obligated party for fuel produced at the [redacted] during that period.

If you have any questions, please contact Byron Bunker of my staff at 734-214-4155.

Sincerely,

Christopher Grundler, Director
Office of Transportation and Air Quality

Enclosure – Decision Document

Grant of Request for Extension of Small Refinery Temporary Exemption Under the Renewable Fuel Standard Program For Andeavor's [redacted]

Contains Information Claimed by Andeavor To be Confidential Business Information

Office of Transportation and Air Quality

EPA received a petition from Andeavor dated December 20, 2017, for a one-year extension of the Renewable Fuel Standard (RFS) small refinery exemption for Andeavor's (b) (4) refinery (the " (b) (4)) in 2017. For the reasons described herein, EPA is granting Andeavor's request for an extension of the (b) (4) RFS small refinery exemption for 2017.

Section 211(o)(9) of the Clean Air Act (CAA) authorizes the Administrator to temporarily exempt small refineries from their renewable fuel volume obligations under the RFS program on the basis of a finding of "disproportionate economic hardship" (DEH). The statute directs EPA, in consultation with the Department of Energy (DOE), to consider the (DOE) Small Refinery Study and "other economic factors" in evaluating small refinery exemption petitions, but CAA section 211(o)(9) leaves the definition of DEH to the Administrator's discretion for purposes of implementing this exemption provision.

After evaluating information submitted by the petitioner, DOE provides a recommendation to EPA on whether a refinery merits exemption from the RFS. As described in its study, DOE assesses the potential for DEH at a refinery on the basis of two sets of metrics. One set assesses structural and economic conditions that could disproportionately impact the refinery (described as "disproportionate impacts" for purposes of DOE's scoring metrics, and also described as "structural" factors or conditions here). The other set assesses economic factors that could cause viability concerns (described as "viability" for purposes of DOE's scoring metrics, and also described as "economic" factors or conditions here).

In previous year decisions, DOE and EPA considered that DEH exists only when a refinery experiences both disproportionate impacts and viability impairment. In response to concerns that the two agencies' threshold for establishing DEH was too stringent, Congress clarified to DOE that DEH can exist if DOE finds that a small refinery is experiencing *either* disproportionate impacts *or* viability impairment. If so, Congress directed DOE to recommend a 50 percent exemption from the RFS. This was relayed in language included in an explanatory statement accompanying the 2016 Appropriations Act that stated: "If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner."[1] Congress then directed EPA to follow DOE's recommendation.[2] [redacted] (b)(4) applied by DOE the (b) (4) [redacted] (b)(4) applied by DOE
[redacted] (b)(4) applied by DOE
the (b) (4) (b) (4) (b) (4) (b) (4)

For the purposes of implementing CAA section 211(o)(9) for 2017 small refinery exemption decisions, EPA has determined that DEH can exist on the basis of adverse structural conditions alone. A difficult year may exacerbate economic problems for small refineries that

[1] Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015). The Explanatory Statement is available at: https://rules.house.gov/bill/114/hr-2029-sa.

[2] Consolidated Appropriations Act, 2017, Pub. L. No. 115-31 (2017); *See also* Senate Report 114-281 ("When making decisions about small refinery exemptions under the RFS program, the Agency is directed to follow DOE's recommendations which are to be based on the original 2011 Small Refinery Exemption Study prepared for Congress and the conference report to division D of the Consolidated Appropriations Act of 2016.").

face disproportionate impacts, resulting in tangible effects including diminished refining margins, reduced profitability, cash flow limitations that can hinder its ability to acquire renewable fuel credits (Renewable Identification Numbers, or RINs) for compliance, and the potential to impair refinery operations. In addition, small refineries sometimes lack access to capital or credit that can also be necessary to achieve compliance.

In its industry-wide analysis, DOE has found that poor access to capital and credit, lack of other business lines, and high diesel production compared to the industry average can suggest a disproportionate structural impact. Poor refining margins, limited ability to blend ethanol, and market competition can suggest a disproportionate economic impact. As noted above, DOE scores the disproportionate structural and economic impacts together as half of its DEH analysis. Here, EPA acknowledges that (b)(4) applied by DOE the (b) (4) (b)(4) applied by DOE [redacted] EPA's review of DOE's analysis is in accord with this conclusion. These conditions disadvantage the refinery relative to larger refineries that may not face similar structural challenges.

DOE also assessed economic factors as the second component of DEH. Here, EPA acknowledges that (b)(4) applied by DOE the (b) (4) (b)(4) applied by DOE (b)(4) applied by DOE [redacted] the (b) (4) (b)(4) applied by DOE

Table 1[4]
DOE Evaluation of Andeavor's Petition for the Gallup Refinery

1	Disproportionate Structural Impact Metrics		Score
a	Access to capital/credit	0 = Good access (BB- or above credit rating), 5 = Moderate access (rating in B's) 10 = Poor access (C rating or 50% D/E)	[redacted]
b	Other business lines besides refining and marketing	0 = Other Lines, 10 = No Other Lines	[redacted]
c	Local market acceptance of Renewables	0 = Products accepted, 10 = Product not accepted	
	i E10	0 = High acceptance, 5 = Low acceptance 10= No acceptance	[redacted]
	ii E85	Not scored because of small E85 volumes	
	iii Biodiesel	Not available	
d	Percentage of diesel production	0 = D/(G+D) < Industry Avg. 5 = D/(G+D) > Ind. Avg<40%. 10=D/(G+D) > 40%	[redacted]
e	Subject to exceptional state regulations	0 = not subject, 5= Some barriers for compliance	[redacted]

[3] From DOE recommendation for the (b) (4) transmitted to EPA on February 20, 2018.

[4] The gray-shaded categories were developed as part of the DOE Small Refinery Study, but DOE has chosen not to assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE's explanation regarding why it does not assign scores for the gray-shaded categories.

		10 = subject to exceptional state regulations	
2	**Disproportionate Economic Impact Metrics**		
a	Relative refining margin measure [5]	0 = Above 3 year industry average 5 = Positive, below 3 year industry average 10= Negative	[redacted]
b	Renewable fuel blending (% of production)		
i	Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%	[redacted]
ii	Biodiesel blending (not used)	0 = 1.1% of diesel production, 1 = <1.1%	
iii	Other Advanced Biofuel blending (not used)	0 = some blending, 10 = no blending	
c	In a niche market	0 = niche 5 = moderate niche impact 10 = no niche	[redacted]
d	RINs net revenue or cost [6]	0 = revenue > cost, 10 = revenue < cost	
	Subtotal (average)		[redacted]
	Ranking (subtotal x 0.50)		
3	**Viability Metrics**		
a	Compliance cost eliminates efficiency gains (impairment)	0 = no impact on efficiency, 5 = moderate impact, 10 = impact on efficiency	[redacted]
b	Individual special events	0 = no special event, 5 = moderate event, 10 = special event impacting viability	[redacted]
c	Compliance costs likely to lead to shut down	0 = not likely to shut down, 10 = likely to shut down	[redacted]
	Subtotal (average)		[redacted]
	Ranking (subtotal x 0.50)		

EPA's analysis extends beyond the metrics DOE applies in assessing potential DEH. EPA considers all of the information submitted by a petitioner when it considers "other economic factors" in evaluating a small refinery petition. For example, EPA considers the information submitted by the petitioner that documents or explains relevant economic conditions or business decisions by the petitioner. EPA may also consider other publicly available information regarding the petitioner that informs EPA's evaluation regarding how "other economic factors" may cause a small refinery to experience DEH if required to comply with its RFS obligations.

Andeavor submitted a petition to EPA on December 20, 2017, for an extension of the RFS small refinery exemption for the (b) (4) for 2017. In support of its petition,

[5] DOE has calculated refining industry gross margins and net margins for 2014, 2015, and 2016, based on public data. The average industry gross and net margins for these three years were $11.40/barrel and $6.52/barrel, respectively (net margin only includes direct operating expenses, it does not include financial expenses such as interest, and depreciation/amortization). The (b) (4) average gross margin and net margin (excluding financial expenses) for 2014-2016 were (b) (4) and (b) (4) , respectively.

[6] DOE has not scored this category for any hardship petition evaluations.

Andeavor submitted financial and other information, including a completed DOE survey form PI-588, which specified the factors that Andeavor believes demonstrate DEH. Andeavor stated tha (b) (4) (b) (4) (b) (4)

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption from compliance with its RFS requirements based on a demonstration by the small refinery of DEH. As described above, Andeavor's petition presents information demonstrating unfavorable structural conditions. Andeavor's petition also presents financial information that documents (b) (4) along with other metrics of economic performance in 2017. Based on our review of all of the available information about the (b) (4) , and our consultation with DOE, EPA has concluded that the (b) (4) will experience DEH that can be relieved in whole or in part by removing its RFS obligations for 2017. Therefore, EPA is granting Andeavor's request for a temporary extension of the (b) (4) small refinery RFS hardship exemption for 2017.

EPA's decision is consistent with DOE's finding that the (b) (4) experienced disproportionate impacts in 2017 and therefore may be granted some level of relief from its 2017 RFS obligations. While DOE recommended a 50% waiver, EPA has decided to grant 100% relief. As explained above, this decision is appropriate under the statutory authority to consult with DOE, consider the 2011 DOE study, and "other economic factors" and it is consistent with the case law recognizing EPA's independent authority in deciding whether to grant or deny RFS small refinery exemption petitions.[8]

This decision is a final agency action for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1), judicial review of this final agency action may be sought in the United States Court of Appeals for the appropriate circuit. This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.

---

[7] Andeavor petition at 6.

[8] *Sinclair*, 874 F.3d at 1166; *See also Hermes Consol., LLC v. EPA*, 787 F.3d 568, 574-575 (D.C. Cir. 2015); *Lion Oil Co. v. EPA*, 792 F.3d 978, 982-983 (8th Cir. 2015).

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 23 2018

OFFICE OF
AIR AND RADIATION

Mr. Keith Casey
EVP, Commercial and Value Chain
Andeavor
19100 Ridgewood Parkway
San Antonio, Texas 78259

Dear Mr. Casey:

I am writing in response to the petition from Andeavor for a one-year extension of the small refinery exemption for 2017 from the requirements of the Renewable Fuel Standard (RFS) program for Andeavor's refinery in (b) (4) (the " (b) (4) "). As you know, the Clean Air Act (CAA) provided that small refineries would be temporarily exempt from the RFS requirements through December 31, 2010. The (b) (4) qualified as a small refinery that was covered by this temporary exemption.

Pursuant to CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2) small refineries may petition EPA to extend the temporary RFS exemption on the basis that compliance with the RFS requirements will cause "disproportionate economic hardship." Pursuant to these provisions, Andeavor submitted a petition to EPA dated December 20, 2017 to extend the exemption for the (b) (4) for 2017.

Based on the information submitted in your petition, and after consultation with the Department of Energy, EPA has decided to grant a one-year extension of Andeavor's RFS small refinery temporary exemption. This means that from January 1, 2017 through December 31, 2017, the (b) (4) gasoline and diesel production are not subject to the percentage standards of 40 CFR 80.1405, and Andeavor is not subject to the requirements of an obligated party for fuel produced at the (b) (4) during that period.

If you have any questions, please contact Byron Bunker of my staff at 734-214-4155.

Sincerely,

Christopher Grundler, Director
Office of Transportation and Air Quality

Enclosure – Decision Document

Grant of Request for Extension of Small Refinery Temporary Exemption Under the Renewable Fuel Standard Program For Andeavor's

(b) (4)

Contains Information Claimed by Andeavor To be Confidential Business Information

Office of Transportation and Air Quality

EPA received a petition from Andeavor dated December 20, 2017, for a one-year extension of the Renewable Fuel Standard (RFS) small refinery exemption for Andeavor's (b) (4) refinery (the " (b) (4) ") in 2017. For the reasons described herein, EPA is granting Andeavor's request for an extension of the (b) (4) RFS small refinery exemption for 2017.

Section 211(o)(9) of the Clean Air Act (CAA) authorizes the Administrator to temporarily exempt small refineries from their renewable fuel volume obligations under the RFS program on the basis of a finding of "disproportionate economic hardship" (DEH). The statute directs EPA, in consultation with the Department of Energy (DOE), to consider the (DOE) Small Refinery Study and "other economic factors" in evaluating small refinery exemption petitions, but CAA section 211(o)(9) leaves the definition of DEH to the Administrator's discretion for purposes of implementing this exemption provision.

After evaluating information submitted by the petitioner, DOE provides a recommendation to EPA on whether a refinery merits exemption from the RFS. As described in its study, DOE assesses the potential for DEH at a refinery on the basis of two sets of metrics. One set assesses structural and economic conditions that could disproportionately impact the refinery (described as "disproportionate impacts" for purposes of DOE's scoring metrics, and also described as "structural" factors or conditions here). The other set assesses economic factors that could cause viability concerns (described as "viability" for purposes of DOE's scoring metrics, and also described as "economic" factors or conditions here).

In previous year decisions, DOE and EPA considered that DEH exists only when a refinery experiences both disproportionate impacts and viability impairment. In response to concerns that the two agencies' threshold for establishing DEH was too stringent, Congress clarified to DOE that DEH can exist if DOE finds that a small refinery is experiencing *either* disproportionate impacts *or* viability impairment. If so, Congress directed DOE to recommend a 50 percent exemption from the RFS. This was relayed in language included in an explanatory statement accompanying the 2016 Appropriations Act that stated: "If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner."[1] Congress then directed EPA to follow DOE's recommendation.[2] (b)(4) applied by DOE the (b) (4) (b)(4) applied by DOE
(b)(4) applied by DOE
(b)(4) applied by DOE the (b) (4) (b) (4) (b) (4) (b) (4)
.

For the purposes of implementing CAA section 211(o)(9) for 2017 small refinery exemption decisions, EPA has determined that DEH can exist on the basis of adverse structural conditions alone. A difficult year may exacerbate economic problems for small refineries that

[1] Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015). The Explanatory Statement is available at: https://rules.house.gov/bill/114/hr-2029-sa.

[2] Consolidated Appropriations Act, 2017, Pub. L. No. 115-31 (2017); *See also* Senate Report 114-281 ("When making decisions about small refinery exemptions under the RFS program, the Agency is directed to follow DOE's recommendations which are to be based on the original 2011 Small Refinery Exemption Study prepared for Congress and the conference report to division D of the Consolidated Appropriations Act of 2016.").

face disproportionate impacts, resulting in tangible effects including diminished refining margins, reduced profitability, cash flow limitations that can hinder its ability to acquire renewable fuel credits (Renewable Identification Numbers, or RINs) for compliance, and the potential to impair refinery operations. In addition, small refineries sometimes lack access to capital or credit that can also be necessary to achieve compliance.

In its industry-wide analysis, DOE has found that poor access to capital and credit, lack of other business lines, and high diesel production compared to the industry average can suggest a disproportionate structural impact. Poor refining margins, limited ability to blend ethanol, and market competition can suggest a disproportionate economic impact. As noted above, DOE scores the disproportionate structural and economic impacts together as half of its DEH analysis. Here, EPA acknowledges that [redacted] the (b) (4) [redacted] EPA's review of DOE's analysis is in accord with this conclusion. These conditions disadvantage the refinery relative to larger refineries that may not face similar structural challenges.

DOE also assessed economic factors as the second component of DEH. Here, EPA acknowledges that [redacted] the (b) (4) [redacted] the (b) (4) [redacted]

Table 1[4]
DOE Evaluation of Andeavor's Petition for the (b) (4)

1	Disproportionate Structural Impact Metrics		Score
a	Access to capital/credit	0 = Good access (BB- or above credit rating), 5 = Moderate access (rating in B's) 10 = Poor access (C rating or 50% D/E)	[redacted]
b	Other business lines besides refining and marketing	0 = Other Lines, 10 = No Other Lines	[redacted]
c	Local market acceptance of Renewables	0 = Products accepted, 10 = Product not accepted	
	i E10	0 = High acceptance, 5 = Low acceptance 10= No acceptance	[redacted]
	ii E85	Not scored because of small E85 volumes	
	iii Biodiesel	Not available	
d	Percentage of diesel production	0 = D/(G+D) < Industry Avg. 5 = D/(G+D) > Ind. Avg<40%. 10=D/(G+D) > 40%	[redacted]
e	Subject to exceptional state regulations	0 = not subject, 5= Some barriers for compliance 10 = subject to exceptional state regulations	[redacted]

[3] From DOE recommendation for the (b) (4) transmitted to EPA on February 20, 2018.

[4] The gray-shaded categories were developed as part of the DOE Small Refinery Study, but DOE has chosen not to assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE's explanation regarding why it does not assign scores for the gray-shaded categories.

2	**Disproportionate Economic Impact Metrics**		
a	Relative refining margin measure [5]	0 = Above 3 year industry average 5 = Positive, below 3 year industry average 10= Negative	[redacted]
b	Renewable fuel blending (% of production)		
	i Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%	[redacted]
	ii Biodiesel blending (not used)	0 = 1.1% of diesel production, 1 = <1.1%	
	iii Other Advanced Biofuel blending (not used)	0 = some blending, 10 = no blending	
c	In a niche market	0 = niche 5 = moderate niche impact 10 = no niche	[redacted]
d	RINs net revenue or cost [6]	0 = revenue > cost, 10 = revenue < cost	
	Subtotal (average)		[redacted]
	Ranking (subtotal x 0.50)		
3	**Viability Metrics**		
a	Compliance cost eliminates efficiency gains (impairment)	0 = no impact on efficiency, 5 = moderate impact, 10 = impact on efficiency	[redacted]
b	Individual special events	0 = no special event, 5 = moderate event, 10 = special event impacting viability	[redacted]
c	Compliance costs likely to lead to shut down	0 = not likely to shut down, 10 = likely to shut down	[redacted]
	Subtotal (average)		[redacted]
	Ranking (subtotal x 0.50)		

EPA's analysis extends beyond the metrics DOE applies in assessing potential DEH. EPA considers all of the information submitted by a petitioner when it considers "other economic factors" in evaluating a small refinery petition. For example, EPA considers the information submitted by the petitioner that documents or explains relevant economic conditions or business decisions by the petitioner. EPA may also consider other publicly available information regarding the petitioner that informs EPA's evaluation regarding how "other economic factors" may cause a small refinery to experience DEH if required to comply with its RFS obligations.

Andeavor submitted a petition to EPA on December 20, 2017, for an extension of the RFS small refinery exemption for the (b) (4) for 2017. In support of its petition, Andeavor submitted financial and other information, including a completed DOE survey form PI-588, which specified the factors that Andeavor believes demonstrate DEH. Andeavor stated

---

[5] DOE has calculated refining industry gross margins and net margins for 2014, 2015, and 2016, based on public data. The average industry gross and net margins for these three years were $11.40/barrel and $6.52/barrel, respectively (net margin only includes direct operating expenses, it does not include financial expenses such as interest, and depreciation/amortization). The (b) (4) average gross margin and net margin (excluding financial expenses) for 2014-2016 were (b) (4) and (b) (4), respectively.

[6] DOE has not scored this category for any hardship petition evaluations.

that (b) (4) (b) (4) (b) (4).

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption from compliance with its RFS requirements based on a demonstration by the small refinery of DEH. As described above, Andeavor's petition presents information demonstrating unfavorable structural conditions. Andeavor's petition also presents financial information that documents (b) (4) along with other metrics of economic performance in 2017. Based on our review of all of the available information about the (b) (4), and our consultation with DOE, EPA has concluded that the (b) (4) will experience DEH that can be relieved in whole or in part by removing its RFS obligations for 2017. Therefore, EPA is granting Andeavor's request for a temporary extension of the (b) (4) small refinery RFS hardship exemption for 2017.

EPA's decision is consistent with [redacted] (b)(4) applied by DOE the (b) (4) [redacted] (b)(4) applied by DOE EPA has decided to grant 100% relief. As explained above, this decision is appropriate under the statutory authority to consult with DOE, consider the 2011 DOE study, and "other economic factors" and it is consistent with the case law recognizing EPA's independent authority in deciding whether to grant or deny RFS small refinery exemption petitions.[8]

This decision is a final agency action for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1), judicial review of this final agency action may be sought in the United States Court of Appeals for the appropriate circuit. This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.

---

[7] Andeavor petition at 6.

[8] *Sinclair*, 874 F.3d at 1166; *See also Hermes Consol., LLC v. EPA*, 787 F.3d 568, 574-575 (D.C. Cir. 2015); *Lion Oil Co. v. EPA*, 792 F.3d 978, 982-983 (8th Cir. 2015).

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
AIR AND RADIATION

MAR 23 2018

Mr. Keith Casey
EVP, Commercial and Value Chain
Andeavor
19100 Ridgewood Parkway
San Antonio, Texas 78259

Dear Mr. Casey:

I am writing in response to the petition from Andeavor for a one-year extension of the small refinery exemption for 2017 from the requirements of the Renewable Fuel Standard (RFS) program for Andeavor's refinery in (b) (4) (the " (b) (4) "). As you know, the Clean Air Act (CAA) provided that small refineries would be temporarily exempt from the RFS requirements through December 31, 2010. The (b) (4) qualified as a small refinery that was covered by this temporary exemption.

Pursuant to CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2) small refineries may petition EPA to extend the temporary RFS exemption on the basis that compliance with the RFS requirements will cause "disproportionate economic hardship." Pursuant to these provisions, Andeavor submitted a petition to EPA dated December 20, 2017 to extend the exemption for the (b) (4) for 2017.

Based on the information submitted in your petition, and after consultation with the Department of Energy, EPA has decided to grant a one-year extension of Andeavor's RFS small refinery temporary exemption. This means that from January 1, 2017 through December 31, 2017, the (b) (4) gasoline and diesel production are not subject to the percentage standards of 40 CFR 80.1405, and Andeavor is not subject to the requirements of an obligated party for fuel produced at the (b) (4) during that period.

If you have any questions, please contact Byron Bunker of my staff at 734-214-4155.

Sincerely,

Christopher Grundler, Director
Office of Transportation and Air Quality

Enclosure – Decision Document

Grant of Request for Extension of Small Refinery Temporary Exemption Under the Renewable Fuel Standard Program For Andeavor's

(b) (4)

Contains Information Claimed by Andeavor To be Confidential Business Information

Office of Transportation and Air Quality

EPA received a petition from Andeavor dated December 20, 2017, for a one-year extension of the Renewable Fuel Standard (RFS) small refinery exemption for Andeavor's (b)(4) (the " in 2017. For the reasons described herein, EPA is granting Andeavor's request for an extension of the (b) (4) RFS small refinery exemption for 2017.

Section 211(o)(9) of the Clean Air Act (CAA) authorizes the Administrator to temporarily exempt small refineries from their renewable fuel volume obligations under the RFS program on the basis of a finding of "disproportionate economic hardship" (DEH). The statute directs EPA, in consultation with the Department of Energy (DOE), to consider the (DOE) Small Refinery Study and "other economic factors" in evaluating small refinery exemption petitions, but CAA section 211(o)(9) leaves the definition of DEH to the Administrator's discretion for purposes of implementing this exemption provision.

After evaluating information submitted by the petitioner, DOE provides a recommendation to EPA on whether a refinery merits exemption from the RFS. As described in its study, DOE assesses the potential for DEH at a refinery on the basis of two sets of metrics. One set assesses structural and economic conditions that could disproportionately impact the refinery (described as "disproportionate impacts" for purposes of DOE's scoring metrics, and also described as "structural" factors or conditions here). The other set assesses economic factors that could cause viability concerns (described as "viability" for purposes of DOE's scoring metrics, and also described as "economic" factors or conditions here).

In previous year decisions, DOE and EPA considered that DEH exists only when a refinery experiences both disproportionate impacts and viability impairment. In response to concerns that the two agencies' threshold for establishing DEH was too stringent, Congress clarified to DOE that DEH can exist if DOE finds that a small refinery is experiencing *either* disproportionate impacts *or* viability impairment. If so, Congress directed DOE to recommend a 50 percent exemption from the RFS. This was relayed in language included in an explanatory statement accompanying the 2016 Appropriations Act that stated: "If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner."[1] Congress then [redacted] (b)(4) applied by DOE

(b)(4) applied by DOE the (b) (4) (b) (4) (b) (4) (b) (4)

For the purposes of implementing CAA section 211(o)(9) for 2017 small refinery exemption decisions, EPA has determined that DEH can exist on the basis of adverse structural conditions alone. A difficult year may exacerbate economic problems for small refineries that

[1] Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015). The Explanatory Statement is available at: https://rules.house.gov/bill/114/hr-2029-sa.

[2] Consolidated Appropriations Act, 2017, Pub. L. No. 115-31 (2017); *See also* Senate Report 114-281 ("When making decisions about small refinery exemptions under the RFS program, the Agency is directed to follow DOE's recommendations which are to be based on the original 2011 Small Refinery Exemption Study prepared for Congress and the conference report to division D of the Consolidated Appropriations Act of 2016.").

face disproportionate impacts, resulting in tangible effects including diminished refining margins, reduced profitability, cash flow limitations that can hinder its ability to acquire renewable fuel credits (Renewable Identification Numbers, or RINs) for compliance, and the potential to impair refinery operations. In addition, small refineries sometimes lack access to capital or credit that can also be necessary to achieve compliance.

In its industry-wide analysis, DOE has found that poor access to capital and credit, lack of other business lines, and high diesel production compared to the industry average can suggest a disproportionate structural impact. Poor refining margins, limited ability to blend ethanol, and market competition can suggest a disproportionate economic impact. As noted above, DOE scores the disproportionate structural and economic impacts together as half of its DEH analysis. Here, EPA acknowledges tha [redacted] (b)(4) applied by DOE the [redacted] (b)(4) applied by DOE EPA's review of DOE's analysis is in accord with this conclusion. These conditions disadvantage the refinery relative to larger refineries that may not face similar structural challenges.

DOE also assessed economic factors as the second component of DEH. Here, EPA acknowledges that [redacted] (b)(4) applied by DOE the [redacted] (b)(4) applied by DOE he [redacted] (b)(4) applied by DOE

Table 1[4]
DOE Evaluation of Andeavor's Petition for the

1	Disproportionate Structural Impact Metrics			Score
	a	Access to capital/credit	0 = Good access (BB- or above credit rating), 5 = Moderate access (rating in B's) 10 = Poor access (C rating or 50% D/E)	[redacted]
	b	Other business lines besides refining and marketing	0 = Other Lines, 10 = No Other Lines	[redacted]
	c	Local market acceptance of Renewables	0 = Products accepted, 10 = Product not accepted	
		i E10	0 = High acceptance, 5 = Low acceptance 10= No acceptance	[redacted]
		ii E85	Not scored because of small E85 volumes	
		iii Biodiesel	Not available	
	d	Percentage of diesel production	0 = D/(G+D) < Industry Avg. 5 = D/(G+D) > Ind. Avg<40%. 10=D/(G+D) > 40%	[redacted]
	e	Subject to exceptional state regulations	0 = not subject, 5= Some barriers for compliance 10 = subject to exceptional state regulations	[redacted]

[3] From DOE recommendation for the transmitted to EPA on February 20, 2018.
[4] The gray-shaded categories were developed as part of the DOE Small Refinery Study, but DOE has chosen not to assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE's explanation regarding why it does not assign scores for the gray-shaded categories.

2	**Disproportionate Economic Impact Metrics**		
a	Relative refining margin measure [5]	0 = Above 3 year industry average 5 = Positive, below 3 year industry average 10= Negative	[redacted]
b	Renewable fuel blending (% of production)		
i	Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%	[redacted]
ii	Biodiesel blending (not used)	0 = 1.1% of diesel production, 1 = <1.1%	
iii	Other Advanced Biofuel blending (not used)	0 = some blending, 10 = no blending	
c	In a niche market	0 = niche 5 = moderate niche impact 10 = no niche	[redacted]
d	RINs net revenue or cost [6]	0 = revenue > cost, 10 = revenue < cost	
	Subtotal (average)		[redacted]
	Ranking (subtotal x 0.50)		[redacted]
3	**Viability Metrics**		
a	Compliance cost eliminates efficiency gains (impairment)	0 = no impact on efficiency, 5 = moderate impact, 10 = impact on efficiency	[redacted]
b	Individual special events	0 = no special event, 5 = moderate event, 10 = special event impacting viability	[redacted]
c	Compliance costs likely to lead to shut down	0 = not likely to shut down, 10 = likely to shut down	[redacted]
	Subtotal (average)		[redacted]
	Ranking (subtotal x 0.50)		[redacted]

EPA's analysis extends beyond the metrics DOE applies in assessing potential DEH. EPA considers all of the information submitted by a petitioner when it considers "other economic factors" in evaluating a small refinery petition. For example, EPA considers the information submitted by the petitioner that documents or explains relevant economic conditions or business decisions by the petitioner. EPA may also consider other publicly available information regarding the petitioner that informs EPA's evaluation regarding how "other economic factors" may cause a small refinery to experience DEH if required to comply with its RFS obligations.

Andeavor submitted a petition to EPA on December 20, 2017, for an extension of the RFS small refinery exemption for the for 2017. In support of its petition, Andeavor submitted financial and other information, including a completed DOE survey form PI-588, which specified the factors that Andeavor believes demonstrate DEH. Andeavor stated

[5] DOE has calculated refining industry gross margins and net margins for 2014, 2015, and 2016, based on public data. The average industry gross and net margins for these three years were $11.40/barrel and $6.52/barrel, respectively (net margin only includes direct operating expenses, it does not include financial expenses such as interest, and depreciation/amortization). The average gross margin and net margin (excluding financial expenses) for 2014-2016 were (b) (4) and (b) (4) , respectively.

[6] DOE has not scored this category for any hardship petition evaluations.

that (b) (4) (b) (4) (b) (4) (b) (4)

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption from compliance with its RFS requirements based on a demonstration by the small refinery of DEH. As described above, Andeavor's petition presents information demonstrating unfavorable structural conditions. Andeavor's petition also presents financial information that documents a (b) (4) along with other metrics of economic performance in 2017. Based on our review of all of the available information about the (b) (4) and our consultation with DOE, EPA has concluded that the (b) (4) will experience DEH that can be relieved in whole or in part by removing its RFS obligations for 2017. Therefore, EPA is granting Andeavor's request for a temporary extension of the (b) (4) small refinery RFS hardship exemption for 2017.

EPA's decision is consistent with (b)(4) applied by DOE the (b) (4) (b)(4) applied by DOE [redacted] EPA has decided to grant 100% relief. As explained above, this decision is appropriate under the statutory authority to consult with DOE, consider the 2011 DOE study, and "other economic factors" and it is consistent with the case law recognizing EPA's independent authority in deciding whether to grant or deny RFS small refinery exemption petitions.[8]

This decision is a final agency action for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1), judicial review of this final agency action may be sought in the United States Court of Appeals for the appropriate circuit. This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.

[7] Andeavor petition at 6.

[8] *Sinclair*, 874 F.3d at 1166; *See also Hermes Consol., LLC v. EPA*, 787 F.3d 568, 574-575 (D.C. Cir. 2015); *Lion Oil Co. v. EPA*, 792 F.3d 978, 982-983 (8th Cir. 2015).

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 27 2018

OFFICE OF
AIR AND RADIATION

Mr. Jeffrey A. Danielson
Vice President and Refinery Manager, Cheyenne Refinery
HollyFrontier Cheyenne Refining LLC
300 Morrie Ave.
Cheyenne, Wyoming 82007

Dear Mr. Danielson:

I am writing in response to the petition from HollyFrontier Refining and Marketing LLC ("HFRM") for a one-year extension of the small refinery exemption for 2017 from the requirements of the Renewable Fuel Standard (RFS) program for HollyFrontier Cheyenne Refining, LLC's ("HFCR's") refinery in Cheyenne, Wyoming (the "Cheyenne Refinery"). As you know, the Clean Air Act (CAA) provided that small refineries would be temporarily exempt from the RFS requirements through December 31, 2010. The Cheyenne Refinery qualified as a small refinery that was covered by this temporary exemption.

Pursuant to CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2) small refineries may petition EPA to extend the temporary RFS exemption on the basis that compliance with the RFS requirements will cause "disproportionate economic hardship." Pursuant to these provisions, HFRM submitted a petition to EPA dated March 8, 2018, to extend the exemption for the Cheyenne Refinery for 2017.

Based on the information submitted in your petition, and after consultation with the Department of Energy, EPA has decided to grant a one-year extension of HFCR's RFS small refinery temporary exemption. This means that from January 1, 2017 through December 31, 2017, the Cheyenne Refinery's gasoline and diesel production are not subject to the percentage standards of 40 CFR 80.1405, and HFCR is not subject to the requirements of an obligated party for fuel produced at the Cheyenne Refinery during that period.

If you have any questions, please contact Byron Bunker of my staff at 734-214-4155.

Sincerely,

Christopher Grundler, Director
Office of Transportation and Air Quality

Enclosure – Decision Document

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 15 2018

OFFICE OF
AIR AND RADIATION

Mr. Scott White
Vice President & Refinery Manager
HollyFrontier Woods Cross Refining LLC
1070 West 500 South
West Bountiful, Utah 84087

Dear Mr. White:

I am writing in response to the petition from HollyFrontier Refining & Marketing, LLC ("HFRM") for a one-year extension of the small refinery exemption for 2017 from the requirements of the Renewable Fuel Standard (RFS) program for HollyFrontier Woods Cross Refining, LLC's ("HFWCR's") refinery in West Bountiful, Utah (the "Woods Cross Refinery"). As you know, the Clean Air Act (CAA) provided that small refineries would be temporarily exempt from the RFS requirements through December 31, 2010. The Woods Cross Refinery qualified as a small refinery that was covered by this temporary exemption.

Pursuant to CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2) small refineries may petition EPA to extend the temporary RFS exemption on the basis that compliance with the RFS requirements will cause "disproportionate economic hardship." Pursuant to these provisions, HFRM submitted a petition to EPA dated March 16, 2018, to extend the exemption for the Woods Cross Refinery for 2017.

Based on the information submitted in your petition, and after consultation with the Department of Energy, EPA has decided to grant a one-year extension of HFWCR's RFS small refinery temporary exemption. This means that from January 1, 2017, through December 31, 2017, the Woods Cross Refinery's gasoline and diesel production are not subject to the percentage standards of 40 CFR 80.1405, and HFWCR is not subject to the requirements of an obligated party for fuel produced at the Woods Cross Refinery during that period.

If you have any questions, please contact Byron Bunker of my staff at 734-214-4155.

Sincerely,

Christopher Grundler, Director
Office of Transportation and Air Quality

Enclosure – Decision Document

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 20 2017

OFFICE OF
AIR AND RADIATION

Mr. Scott White
Vice President and Refinery Manager, Woods Cross Refinery
HollyFrontier Woods Cross Refining LLC
1070 West 500 South
West Bountiful, Utah 84087

Dear Mr. White:

I am writing in response to the petition from HollyFrontier Refining and Marketing LLC ("HFRM") for a one-year extension of the small refinery exemption for 2016 from the requirements of the renewable fuel standard (RFS) program for HollyFrontier Woods Cross Refining LLC's ("HFWCR's") refinery in West Bountiful, Utah (the "Woods Cross Refinery"). As you know, the Clean Air Act (CAA) provided that small refineries would be temporarily exempt from the RFS requirements through December 31, 2010. The Woods Cross Refinery qualified as a small refinery that was covered by this temporary exemption.

Pursuant to CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2) small refineries may petition EPA to extend the temporary RFS exemption on the basis that compliance with the RFS requirements will cause "disproportionate economic hardship." Pursuant to these provisions, HFRM submitted a petition to EPA dated September 12, 2017 to extend the exemption for the Woods Cross Refinery for 2016.

Based on the information submitted in your petition, and after consultation with the Department of Energy, EPA has decided to grant a one-year extension of HFWCR's RFS small refinery temporary exemption. This means that from January 1, 2016 through December 31, 2016, the Woods Cross Refinery's gasoline and diesel production are not subject to the percentage standards of 40 CFR 80.1405, and HFWCR is not subject to the requirements of an obligated party for fuel produced at the Woods Cross Refinery during that period.

If you have any questions, please contact Byron Bunker of my staff at 734-214-4155.

Sincerely,

Christopher Grundler, Director
Office of Transportation and Air Quality

Enclosure – Decision Document

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 23 2018

OFFICE OF
AIR AND RADIATION

[redacted]

Dear [redacted]

I am writing in response to the petition from [redacted] for a one-year extension of the small refinery exemption for 2017 from the requirements of the Renewable Fuel Standard (RFS) program for [redacted] refinery in [redacted] As you know, the Clean Air Act (CAA) provided that small refineries would be temporarily exempt from the RFS requirements through December 31, 2010. The [redacted] qualified as a small refinery that was covered by this temporary exemption.

Pursuant to CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2) small refineries may petition EPA to extend the temporary RFS exemption on the basis that compliance with the RFS requirements will cause "disproportionate economic hardship." Pursuant to these provisions, [redacted] submitted a petition to EPA dated December 27, 2017, to extend the exemption for the [redacted]

Based on the information submitted in your petition, and after consultation with the Department of Energy, EPA has decided to grant a one-year extension of [redacted] RFS small refinery temporary exemption. This means that from January 1, 2017, through December 31, 2017, the [redacted] gasoline and diesel production are not subject to the percentage standards of 40 CFR 80.1405, and [redacted] is not subject to the requirements of an obligated party for fuel produced at the [redacted] during that period.

If you have any questions, please contact Byron Bunker of my staff at 734-214-4155.

Sincerely,

Christopher Grundler, Director
Office of Transportation and Air Quality

Enclosure – Decision Document

Grant of Request for Extension of Small Refinery Temporary Exemption Under the Renewable Fuel Standard Program For

[redacted]

Contains Information Claimed by

[redacted]

To be Confidential Business Information

Office of Transportation and Air Quality

EPA received a petition from [redacted] dated December 27, 2017, for an extension of the Renewable Fuel Standard (RFS) small refinery exemption for [redacted] refinery ([redacted]) in 2017. For the reasons described herein, EPA is granting [redacted] request for an extension of [redacted] RFS small refinery exemption for 2017.

Section 211(o)(9) of the Clean Air Act (CAA) authorizes the Administrator to temporarily exempt small refineries from their renewable fuel volume obligations under the RFS program on the basis of a finding of "disproportionate economic hardship" (DEH). The statute directs EPA, in consultation with the Department of Energy (DOE), to consider the (DOE) Small Refinery Study and "other economic factors" in evaluating small refinery exemption petitions, but CAA section 211(o)(9) leaves the definition of DEH to the Administrator's discretion for purposes of implementing this exemption provision.

After evaluating information submitted by the petitioner, DOE provides a recommendation to EPA on whether a refinery merits exemption from RFS. As described in its study, DOE assesses the potential for DEH at a refinery on the basis of two sets of metrics. One set assesses structural and economic conditions that could disproportionately impact the refinery, (described as "disproportionate impacts" for purposes of DOE's scoring metrics, and also described as "structural" factors or conditions here). The other set assesses economic factors that could cause viability concerns (described as "viability" for purposes of DOE's scoring metrics, and also described as "economic" factors or conditions here).

In previous year decisions, DOE and EPA considered that DEH exists only when a refinery experiences both disproportionate impacts and viability impairment. In response to concerns that the two agencies' threshold for establishing DEH was too stringent, Congress clarified to DOE that DEH can exist if DOE finds that a small refinery is experiencing *either* disproportionate impacts *or* viability impairment. If so, Congress directed DOE to recommend a 50 percent exemption from the RFS. This was relayed in language included in an explanatory statement accompanying the 2016 Appropriations Act that stated: "If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner."[1] Congress then directed EPA to follow DOE's recommendation.[2] [redacted] BWOR's [redacted]

For the purposes of implementing CAA section 211(o)(9) for 2017 small refinery exemption decisions, EPA has determined that DEH can exist on the basis of adverse structural conditions alone. A difficult year may exacerbate economic problems for small refineries that face disproportionate impacts, resulting in tangible effects including diminished refining

---

[1] Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015). The Explanatory Statement is available at: https://rules.house.gov/bill/114/hr-2029-sa.

[2] Consolidated Appropriations Act, 2017, Pub. L. No. 115-31 (2017); *See also* Senate Report 114-281 ("When making decisions about small refinery exemptions under the RFS program, the Agency is directed to follow DOE's recommendations which are to be based on the original 2011 Small Refinery Exemption Study prepared for Congress and the conference report to division D of the Consolidated Appropriations Act of 2016.").

margins, reduced profitability, cash flow limitations that can hinder its ability to acquire renewable fuel credits (Renewable Identification Numbers, or RINs) for compliance, and the potential to impair refinery operations. In addition, small refineries sometimes lack access to capital or credit that can also be necessary to achieve compliance.

In its industry-wide analysis, DOE has found that poor access to capital and credit, lack of other business lines, and high diesel production compared to the industry average can suggest a disproportionate structural impact. Poor refining margins, limited ability to blend ethanol, and market competition can suggest a disproportionate economic impact. As noted above, DOE scores the disproportionate structural and economic impacts together as half of its DEH analysis. Here, EPA acknowledges that [redacted] EPA's review of DOE's analysis is in accord with this conclusion. These conditions disadvantage the refinery relative to larger refineries that may not face similar structural challenges.

DOE also assessed economic factors as the second component of DEH. Here, EPA acknowledges that [redacted][3] Therefore [redacted]

Table 1[4]
DOE Evaluation of [redacted] Petition

1	Disproportionate Structural Impact Metrics		Score
a	Access to capital/credit	0 = Good access (BB- or above credit rating), 5 = Moderate access (rating in B's) 10 = Poor access (C rating or 50% D/E)	[redacted]
b	Other business lines besides refining and marketing	0 = Other Lines, 10 = No Other Lines	[redacted]
c	Local market acceptance of Renewables	0 = Products accepted, 10 = Product not accepted	
	i E10	0 = High acceptance, 5 = Low acceptance 10= No acceptance	[redacted]
	ii E85	Not scored because of small E85 volumes	
	iii Biodiesel	Not available	
d	Percentage of diesel production	0 = D/(G+D) < Industry Avg. 5 = D/(G+D) > Ind. Avg<40%. 10=D/(G+D) > 40%	[redacted]
e	Subject to exceptional state regulations	0 = not subject, 5= Some barriers for compliance 10 = subject to exceptional state regulations	[redacted]

[3] From DOE recommendation for [redacted] transmitted to EPA on February 22, 2018.
[4] The gray-shaded categories were developed as part of the DOE Small Refinery Study, but DOE has chosen not to assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE's explanation regarding why it does not assign scores in the gray-shaded categories.

2	**Disproportionate Economic Impact Metrics**		
a	Relative refining margin measure [5]	0 = Above 3-year industry average 5 = Positive, below 3-year industry average 10= Negative	[redacted]
b	Renewable fuel blending (% of production)		
i	Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%	[redacted]
ii	Biodiesel blending (not used)	0 = 1.1% of diesel production, 1 = <1.1%	
iii	Other Advanced Biofuel blending (not used)	0 = some blending, 10 = no blending	
c	In a niche market	0 = niche 5 = moderate niche impact 10 = no niche	[redacted]
d	RINs net revenue or cost [6]	0 = revenue > cost, 10 = revenue < cost	
	Subtotal (average)		[redacted]
	Ranking (subtotal x 0.50)		[redacted]
3	**Viability Metrics**		
a	Compliance cost eliminates efficiency gains (impairment)	0 = no impact on efficiency, 5 = moderate impact, 10 = impact on efficiency	[redacted]
b	Individual special events	0 = no special event, 5 = moderate event, 10 = special event impacting viability	[redacted]
c	Compliance costs likely to lead to shut down	0 = not likely to shut down, 10 = likely to shut down	[redacted]
	Subtotal (average)		[redacted]
	Ranking (subtotal x 0.50)		[redacted]

EPA's analysis extends beyond the metrics DOE applies in assessing potential DEH. EPA considers all of the information submitted by a petitioner when it considers "other economic factors" in evaluating a small refinery petition. For example, EPA considers the information submitted by the petitioner that documents or explains relevant economic conditions or business decisions by the petitioner. EPA may also consider other publicly available information regarding the petitioner that informs EPA's evaluation regarding how "other economic factors" may cause a small refinery to experience DEH if required to comply with its RFS obligations.

[redacted] submitted a petition to EPA dated December 27, 2017 for an extension of the RFS small refinery exemption for [redacted] for 2017. In support of its petition, [redacted] submitted financial and other information, including a completed DOE survey form PI-588, which specified the factors that [redacted] believes demonstrate DEH. [redacted]

[5] DOE has calculated refining industry gross margins and net margins for 2014, 2015, and 2016, based on public data. The average industry gross and net margins for these three years were $11.40/bbl and $6.52/bbl, respectively (net margin only includes direct operating expenses, it does not include financial expenses such as interest, and depreciation/amortization). [redacted] average gross margin and net margin (excluding financial expenses) for 2014-2016 were [redacted] and [redacted] respectively. (Gross margin calculation exhibit, and DOE Form PI-588, Sec. 3.6,7, submitted with petition dated December 27, 2017.)

[6] DOE has not scored this category for any hardship petition evaluations.

[redacted],[7] and [redacted] stated that [redacted].[8] [redacted] stated that [redacted] [redacted] stated that [redacted].[10]

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption from compliance with its RFS requirements based on a demonstration by the small refinery of a DEH. As described above, [redacted] petition presents financial information that documents structural challenges along with other metrics of poor economic performance in 2017. Based on our review of all of the available information about [redacted], and our consultation with DOE, EPA has concluded that [redacted] will experience DEH that can be relieved in whole or in part by removing its RFS compliance obligations for 2017. Therefore, EPA is granting [redacted] request for a temporary extension of [redacted] small refinery RFS hardship exemption for 2017.

EPA's decision is consistent with [redacted], EPA has decided to grant 100 percent relief. As explained above, this decision is appropriate under the statutory authority to consult with DOE, consider the 2011 DOE study, and "other economic factors" and it is consistent with the case law recognizing EPA's independent authority in deciding whether to grant or deny RFS small refinery exemption petitions.[11]

This decision is a final agency action for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1), judicial review of this final agency action may be sought in the United States Court of Appeals for the appropriate circuit. This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.

---

[7] DOE Form PI-588, Sec. 3.15, submitted with petition dated December 27, 2017.
[8] Petition at 1.
[9] Petition at 2, and Form PI-588, Sec. 3.24, 3.27, submitted with petition.
[10] Petition at 1-2.
[11] *Sinclair*, 874 F.3d at 1166; *See also Hermes Consol., LLC v. EPA*, 787 F.3d 568, 574-575 (D.C. Cir. 2015); *Lion Oil Co. v. EPA*, 792 F.3d 978, 982-983 (8th Cir. 2015).

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 2 3 2018

OFFICE OF
AIR AND RADIATION

(b) (4)

Dear (b) (4)

I am writing in response to the petition from (b) (4) for a one-year extension of the small refinery exemption for 2017 from the requirements of the Renewable Fuel Standard (RFS) program for (b) (4) refinery in (b) (4) As you know, the Clean Air Act (CAA) provided that small refineries would be temporarily exempt from the RFS requirements through December 31, 2010. The (b) (4) qualified as a small refinery that was covered by this temporary exemption.

Pursuant to CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2) small refineries may petition EPA to extend the temporary RFS exemption on the basis that compliance with the RFS requirements will cause "disproportionate economic hardship." Pursuant to these provisions, (b) (4) submitted a petition to EPA dated April 20, 2018 to extend the exemption for the (b) (4) for 2017.

Based on the information submitted in your petition, and after consultation with the Department of Energy, EPA has decided to grant a one-year extension of (b) (4) RFS small refinery temporary exemption. This means that from January 1, 2017 through December 31, 2017, the (b) (4) gasoline and diesel production are not subject to the percentage standards of 40 CFR 80.1405, and (b) (4) is not subject to the requirements of an obligated party for fuel produced at the (b) (4) during that period.

If you have any questions, please contact Byron Bunker of my staff at 734-214-4155.

Sincerely,

Christopher Grundler, Director
Office of Transportation and Air Quality

Enclosure – Decision Document

Grant of Request for Extension of Small Refinery Temporary Exemption Under the Renewable Fuel Standard Program For

(b) (4)

Contains Information Claimed by

(b) (4)

To be Confidential Business Information

Office of Transportation and Air Quality

EPA received a petition from (b) (4) dated April 20, 2018, for a one-year extension of the Renewable Fuel Standard (RFS) small refinery exemption for (b) (4) refinery (the "(b) (4) ") in 2017. For the reasons described herein, EPA is granting (b) (4) 's request for an extension of the (b) (4) 's RFS small refinery exemption for 2017.

Section 211(o)(9) of the Clean Air Act (CAA) authorizes the Administrator to temporarily exempt small refineries from their renewable fuel volume obligations under the RFS program on the basis of a finding of "disproportionate economic hardship" (DEH). The statute directs EPA, in consultation with the Department of Energy (DOE), to consider the (DOE) Small Refinery Study and "other economic factors" in evaluating small refinery exemption petitions, but CAA section 211(o)(9) leaves the definition of DEH to the Administrator's discretion for purposes of implementing this exemption provision.

After evaluating information submitted by the petitioner, DOE provides a recommendation to EPA on whether a refinery merits exemption from the RFS. As described in its study, DOE assesses the potential for DEH at a refinery on the basis of two sets of metrics. One set assesses structural and economic conditions that could disproportionately impact the refinery (described as "disproportionate impacts" for purposes of DOE's scoring metrics, and also described as "structural" factors or conditions here). The other set assesses economic factors that could cause viability concerns (described as "viability" for purposes of DOE's scoring metrics, and also described as "economic" factors or conditions here).

In previous year decisions, DOE and EPA considered that DEH exists only when a refinery experiences both disproportionate impacts and viability impairment. In response to concerns that the two agencies' threshold for establishing DEH was too stringent, Congress clarified to DOE that DEH can exist if DOE finds that a small refinery is experiencing *either* disproportionate impacts *or* viability impairment. If so, Congress directed DOE to recommend a 50 percent exemption from the RFS. This was relayed in language included in an explanatory statement accompanying the 2016 Appropriations Act that stated: "If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner."[1] Congress then directed EPA to follow DOE's recommendation.[2] [redacted] the (b) (4) 's [redacted] (b)(4) applied by DOE [redacted] the (b) (4) [redacted] (b) (4) 's (b) (4)).

For the purposes of implementing CAA section 211(o)(9) for 2017 small refinery exemption decisions, EPA has determined that DEH can exist on the basis of adverse structural conditions alone. A difficult year may exacerbate economic problems for small refineries that

---

[1] Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015). The Explanatory Statement is available at: https://rules.house.gov/bill/114/hr-2029-sa.

[2] Consolidated Appropriations Act, 2017, Pub. L. No. 115-31 (2017); *See also* Senate Report 114-281 ("When making decisions about small refinery exemptions under the RFS program, the Agency is directed to follow DOE's recommendations which are to be based on the original 2011 Small Refinery Exemption Study prepared for Congress and the conference report to division D of the Consolidated Appropriations Act of 2016.").

face disproportionate impacts, resulting in tangible effects including diminished refining margins, reduced profitability, cash flow limitations that can hinder its ability to acquire renewable fuel credits (Renewable Identification Numbers, or RINs) for compliance, and the potential to impair refinery operations. In addition, small refineries sometimes lack access to capital or credit that can also be necessary to achieve compliance.

In its industry-wide analysis, DOE has found that poor access to capital and credit, lack of other business lines, and high diesel production compared to the industry average can suggest a disproportionate structural impact. Poor refining margins, limited ability to blend ethanol, and market competition can suggest a disproportionate economic impact. As noted above, DOE scores the disproportionate structural and economic impacts together as half of its DEH analysis. Here, (b)(4) applied by DOE [redacted] the (b) (4) (b)(4) applied by DOE [redacted] EPA's review of DOE's analysis is in accord with this conclusion. These conditions disadvantage the refinery relative to larger refineries that may not face similar structural challenges.

DOE also assessed economic factors as the second component of DEH. Here, EPA acknowledges that (b)(4) [redacted] the (b) (4) (b)(4) applied by DOE [redacted] (b)(4) applied by DOE [redacted] the (b) (4) (b)(4) applied by DOE [redacted]

Table 1[4]
DOE Evaluation of (b) (4) Petition for the (b) (4)

1	Disproportionate Structural Impact Metrics		Score
a	Access to capital/credit	0 = Good access (BB- or above credit rating), 5 = Moderate access (rating in B's) 10 = Poor access (C rating or 50% D/E)	[redacted]
b	Other business lines besides refining and marketing	0 = Other Lines, 10 = No Other Lines	[redacted]
c	Local market acceptance of Renewables	0 = Products accepted, 10 = Product not accepted	
	i E10	0 = High acceptance, 5 = Low acceptance 10= No acceptance	[redacted]
	ii E85	Not scored because of small E85 volumes	
	iii Biodiesel	Not available	
d	Percentage of diesel production	0 = D/(G+D) < Industry Avg. 5 = D/(G+D) > Ind. Avg<40%. 10=D/(G+D) > 40%	[redacted]
e	Subject to exceptional state regulations	0 = not subject, 5= Some barriers for compliance 10 = subject to exceptional state regulations	[redacted]

[3] From DOE recommendation for the (b) (4) transmitted to EPA on May 16, 2018.
[4] The gray-shaded categories were developed as part of the DOE Small Refinery Study, but DOE has chosen not to assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE's explanation regarding why it does not assign scores for the gray-shaded categories.

2	**Disproportionate Economic Impact Metrics**		
a	Relative refining margin measure [5]	0 = Above 3 year industry average 5 = Positive, below 3 year industry average 10= Negative	[redacted]
b	Renewable fuel blending (% of production)		
	i Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%	[redacted]
	ii Biodiesel blending (not used)	0 = 1.1% of diesel production, 1 = <1.1%	
	iii Other Advanced Biofuel blending (not used)	0 = some blending, 10 = no blending	
c	In a niche market	0 = niche 5 = moderate niche impact 10 = no niche	[redacted]
d	RINs net revenue or cost [6]	0 = revenue > cost, 10 = revenue < cost	
	Subtotal (average)		[redacted]
	Ranking (subtotal x 0.50)		
3	**Viability Metrics**		
a	Compliance cost eliminates efficiency gains (impairment)	0 = no impact on efficiency, 5 = moderate impact, 10 = impact on efficiency	[redacted]
b	Individual special events	0 = no special event, 5 = moderate event, 10 = special event impacting viability	[redacted]
c	Compliance costs likely to lead to shut down	0 = not likely to shut down, 10 = likely to shut down	[redacted]
	Subtotal (average)		[redacted]
	Ranking (subtotal x 0.50)		

EPA's analysis extends beyond the metrics DOE applies in assessing potential DEH. EPA considers all of the information submitted by a petitioner when it considers "other economic factors" in evaluating a small refinery petition. For example, EPA considers the information submitted by the petitioner that documents or explains relevant economic conditions or business decisions by the petitioner. EPA may also consider other publicly available information regarding the petitioner that informs EPA's evaluation regarding how "other economic factors" may cause a small refinery to experience DEH if required to comply with its RFS obligations.

(b) (4) submitted a petition to EPA on April 20, 2018, for an extension of the RFS small refinery exemption for the (b) (4) for 2017. In support of its petition, (b) (4) submitted financial and other information, including a completed DOE survey form PI-588, which specified the factors that (b) (4) believes demonstrate DEH. (b) (4) stated that (b) (4)

[5] DOE has calculated refining industry gross margins and net margins for 2014, 2015, and 2016, based on public data. The average industry gross and net margins for these three years were $11.40/barrel and $6.52/barrel, respectively (net margin only includes direct operating expenses, it does not include financial expenses such as interest, and depreciation/amortization). The (b) (4) 's average gross margin and net margin (excluding financial expenses) for 2014-2016 were (b) (4) and (b) (4) , respectively, on a volume-weighted basis.
[6] DOE has not scored this category for any hardship petition evaluations.

(b) (4) (b) (4) (b) (4) (b) (4) (b) (4)

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption from compliance with its RFS requirements based on a demonstration by the small refinery of DEH. As described above, (b) (4)'s petition presents information demonstrating unfavorable structural conditions, along with financial information that documents economic performance in 2017. Based on our review of all the available information about the (b) (4), and our consultation with DOE, EPA has concluded that the (b) (4) will experience DEH that can be relieved in whole or in part by removing its RFS obligations for 2017. Therefore, EPA is granting (b) (4)'s request for a temporary extension of the (b) (4)'s small refinery RFS hardship exemption for 2017.

(b)(4) applied by DOE [redacted] the (b) (4) (b)(4) [redacted] (b)(4) applied by DOE [redacted] EPA has decided to grant 100% relief. As explained above, this decision is appropriate under the statutory authority to consult with DOE, consider the 2011 DOE study, and "other economic factors" and it is consistent with the case law recognizing EPA's independent authority in deciding whether to grant or deny RFS small refinery exemption petitions.[8]

This decision is a final agency action for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1), judicial review of this final agency action may be sought in the United States Court of Appeals for the appropriate circuit. This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.

[7] (b) (4) petition at 5.

[8] *Sinclair*, 874 F.3d at 1166; *See also Hermes Consol., LLC v. EPA*, 787 F.3d 568, 574-575 (D.C. Cir. 2015); *Lion Oil Co. v. EPA*, 792 F.3d 978, 982-983 (8th Cir. 2015).

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
AIR AND RADIATION

MAY 15 2018

Mr. Patrick Kimmet
Vice President of Laurel Refining
CHS Inc.
803 Highway 212, South
Laurel, Montana 59044

Dear Mr. Kimmet:

I am writing in response to the petition from CHS Inc. ("CHS") for a one-year extension of the small refinery exemption for 2017 from the requirements of the Renewable Fuel Standard (RFS) program for CHS's refinery in Laurel, Montana (the "Laurel Refinery"). As you know, the Clean Air Act (CAA) provided that small refineries would be temporarily exempt from the RFS requirements through December 31, 2010. The Laurel Refinery qualified as a small refinery that was covered by this temporary exemption.

Pursuant to CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2) small refineries may petition EPA to extend the temporary RFS exemption on the basis that compliance with the RFS requirements will cause "disproportionate economic hardship." Pursuant to these provisions, CHS submitted a petition to EPA dated March 14, 2018 to extend the exemption for the Laurel Refinery for 2017.

Based on the information submitted in your petition, and after consultation with the Department of Energy, EPA has decided to grant a one-year extension of CHS's RFS small refinery temporary exemption. This means that from January 1, 2017 through December 31, 2017, the Laurel Refinery's gasoline and diesel production are not subject to the percentage standards of 40 CFR 80.1405, and CHS is not subject to the requirements of an obligated party for fuel produced at the Laurel Refinery during that period.

If you have any questions, please contact Byron Bunker of my staff at 734-214-4155.

Sincerely,

Christopher Grundler, Director
Office of Transportation and Air Quality

Enclosure – Decision Document

Grant of Request for Extension of Small Refinery Temporary Exemption Under the Renewable Fuel Standard Program For CHS Inc.'s Laurel, Montana Refinery

Contains Information Claimed by CHS, Inc. To be Confidential Business Information

Office of Transportation and Air Quality

EPA received a petition from CHS, Inc. ("CHS") dated March 14, 2018, for a one-year extension of the Renewable Fuel Standard (RFS) small refinery exemption for CHS's Laurel, Montana refinery (the "Laurel Refinery") in 2017. For the reasons described herein, EPA is granting CHS's request for an extension of the Laurel Refinery's RFS small refinery exemption for 2017.

Section 211(o)(9) of the Clean Air Act (CAA) authorizes the Administrator to temporarily exempt small refineries from their renewable fuel volume obligations under the RFS program on the basis of a finding of "disproportionate economic hardship" (DEH). The statute directs EPA, in consultation with the Department of Energy (DOE), to consider the (DOE) Small Refinery Study and "other economic factors" in evaluating small refinery exemption petitions, but CAA section 211(o)(9) leaves the definition of DEH to the Administrator's discretion for purposes of implementing this exemption provision.

After evaluating information submitted by the petitioner, DOE provides a recommendation to EPA on whether a refinery merits exemption from the RFS. As described in its study, DOE assesses the potential for DEH at a refinery on the basis of two sets of metrics. One set assesses structural and economic conditions that could disproportionately impact the refinery (described as "disproportionate impacts" for purposes of DOE's scoring metrics, and also described as "structural" factors or conditions here). The other set assesses economic factors that could cause viability concerns (described as "viability" for purposes of DOE's scoring metrics, and also described as "economic" factors or conditions here).

In previous year decisions, DOE and EPA considered that DEH exists only when a refinery experiences both disproportionate impacts and viability impairment. In response to concerns that the two agencies' threshold for establishing DEH was too stringent, Congress clarified to DOE that DEH can exist if DOE finds that a small refinery is experiencing *either* disproportionate impacts *or* viability impairment. If so, Congress directed DOE to recommend a 50 percent exemption from the RFS. This was relayed in language included in an explanatory statement accompanying the 2016 Appropriations Act that stated: "If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner."[1] Congress then directed EPA to follow DOE's recommendation.[2] [redacted] the Laurel Refinery's [redacted] the Laurel Refinery [redacted] the Laurel Refinery's [redacted]

For the purposes of implementing CAA section 211(o)(9) for 2017 small refinery exemption decisions, EPA has determined that DEH can exist on the basis of adverse structural conditions alone. A difficult year may exacerbate economic problems for small refineries that

---

[1] Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015). The Explanatory Statement is available at: https://rules.house.gov/bill/114/hr-2029-sa.

[2] Consolidated Appropriations Act, 2017, Pub. L. No. 115-31 (2017); *See also* Senate Report 114-281 ("When making decisions about small refinery exemptions under the RFS program, the Agency is directed to follow DOE's recommendations which are to be based on the original 2011 Small Refinery Exemption Study prepared for Congress and the conference report to division D of the Consolidated Appropriations Act of 2016.").

face disproportionate impacts, resulting in tangible effects including diminished refining margins, reduced profitability, cash flow limitations that can hinder its ability to acquire renewable fuel credits (Renewable Identification Numbers, or RINs) for compliance, and the potential to impair refinery operations. In addition, small refineries sometimes lack access to capital or credit that can also be necessary to achieve compliance.

In its industry-wide analysis, DOE has found that poor access to capital and credit, lack of other business lines, and high diesel production compared to the industry average can suggest a disproportionate structural impact. Poor refining margins, limited ability to blend ethanol, and market competition can suggest a disproportionate economic impact. As noted above, DOE scores the disproportionate structural and economic impacts together as half of its DEH analysis. Here, EPA acknowledges that [redacted] the Laurel Refinery [redacted] review of DOE's analysis is in accord with this conclusion. These conditions disadvantage the refinery relative to larger refineries that may not face similar structural challenges.

DOE also assessed economic factors as the second component of DEH. Here, EPA acknowledges that [redacted] the Laurel Refinery [redacted][3] Therefore, [redacted] the Laurel Refinery [redacted]

Table 1[4]
DOE Evaluation of CHS's Petition for the Laurel Refinery

1	Disproportionate Structural Impact Metrics			Score
a	Access to capital/credit		0 = Good access (BB- or above credit rating), 5 = Moderate access (rating in B's) 10 = Poor access (C rating or 50% D/E)	[redacted]
b	Other business lines besides refining and marketing		0 = Other Lines, 10 = No Other Lines	[redacted]
c	Local market acceptance of Renewables		0 = Products accepted, 10 = Product not accepted	
	i	E10	0 = High acceptance, 5 = Low acceptance 10= No acceptance	[redacted]
	ii	E85	Not scored because of small E85 volumes	
	iii	Biodiesel	Not available	
d	Percentage of diesel production		0 = D/(G+D) < Industry Avg. 5 = D/(G+D) > Ind. Avg<40%. 10=D/(G+D) > 40%	[redacted]
e	Subject to exceptional state regulations		0 = not subject, 5= Some barriers for compliance 10 = subject to exceptional state regulations	[redacted]

[3] From DOE recommendation for the Laurel Refinery transmitted to EPA on April 18, 2018.
[4] The gray-shaded categories were developed as part of the DOE Small Refinery Study, but DOE has chosen not to assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE's explanation regarding why it does not assign scores for the gray-shaded categories.

2	**Disproportionate Economic Impact Metrics**		
a	Relative refining margin measure [5]	0 = Above 3 year industry average 5 = Positive, below 3 year industry average 10= Negative	[redacted]
b	Renewable fuel blending (% of production)		
	i Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%	[redacted]
	ii Biodiesel blending (not used)	0 = 1.1% of diesel production, 1 = <1.1%	
	iii Other Advanced Biofuel blending (not used)	0 = some blending, 10 = no blending	
c	In a niche market	0 = niche 5 = moderate niche impact 10 = no niche	[redacted]
d	RINs net revenue or cost [6]	0 = revenue > cost, 10 = revenue < cost	
	Subtotal (average)		[redacted]
	Ranking (subtotal x 0.50)		
3	**Viability Metrics**		
a	Compliance cost eliminates efficiency gains (impairment)	0 = no impact on efficiency, 5 = moderate impact, 10 = impact on efficiency	[redacted]
b	Individual special events	0 = no special event, 5 = moderate event, 10 = special event impacting viability	[redacted]
c	Compliance costs likely to lead to shut down	0 = not likely to shut down, 10 = likely to shut down	[redacted]
	Subtotal (average)		[redacted]
	Ranking (subtotal x 0.50)		

EPA's analysis extends beyond the metrics DOE applies in assessing potential DEH. EPA considers all of the information submitted by a petitioner when it considers "other economic factors" in evaluating a small refinery petition. For example, EPA considers the information submitted by the petitioner that documents or explains relevant economic conditions or business decisions by the petitioner. EPA may also consider other publicly available information regarding the petitioner that informs EPA's evaluation regarding how "other economic factors" may cause a small refinery to experience DEH if required to comply with its RFS obligations.

CHS submitted a petition to EPA on March 14, 2018, for an extension of the RFS small refinery exemption for the Laurel Refinery for 2017. In support of its petition, CHS submitted financial and other information, including a completed DOE survey form PI-588, which specified the factors that CHS believes demonstrate DEH. CHS stated (b) (4)

[5] DOE has calculated refining industry gross margins and net margins for 2014, 2015, and 2016, based on public data. The average industry gross and net margins for these three years were $11.40/barrel and $6.52/barrel, respectively (net margin only includes direct operating expenses, it does not include financial expenses such as interest, and depreciation/amortization). The Laurel Refinery's average gross margin and net margin (excluding financial expenses) for 2014-2016 were (b) (4) and (b) (4) , respectively.

[6] DOE has not scored this category for any hardship petition evaluations.

the Laurel Refinery (b) (4)

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption from compliance with its RFS requirements based on a demonstration by the small refinery of DEH. As described above, CHS's petition presents information demonstrating unfavorable structural conditions, along with financial information that documents economic performance in 2017. Based on our review of all the available information about the Laurel Refinery, and our consultation with DOE, EPA has concluded that the Laurel Refinery will experience DEH that can be relieved in whole or in part by removing its RFS obligations for 2017. Therefore, EPA is granting CHS's request for a temporary extension of the Laurel Refinery's small refinery RFS hardship exemption for 2017.

EPA's decision is consistent with (b)(4) applied by [redacted] the Laurel Refinery (b)(4) applied [redacted] (b)(4) applied by DOE [redacted] EPA has decided to grant 100% relief. As explained above, this decision is appropriate under the statutory authority to consult with DOE, consider the 2011 DOE study, and "other economic factors" and it is consistent with the case law recognizing EPA's independent authority in deciding whether to grant or deny RFS small refinery exemption petitions.[8]

This decision is a final agency action for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1), judicial review of this final agency action may be sought in the United States Court of Appeals for the appropriate circuit. This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.

[7] CHS petition at 5.

[8] *Sinclair*, 874 F.3d at 1166; *See also Hermes Consol., LLC v. EPA*, 787 F.3d 568, 574-575 (D.C. Cir. 2015); *Lion Oil Co. v. EPA*, 792 F.3d 978, 982-983 (8th Cir. 2015).

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 15 2018

OFFICE OF
AIR AND RADIATION

(b) (4)

Dear (b) (4)

I am writing in response to the petition from (b) (4) for a one-year extension of the small refinery exemption for 2017 from the requirements of the Renewable Fuel Standard (RFS) program for (b) (4) refinery in (b) (4) As you know, the Clean Air Act (CAA) provided that small refineries would be temporarily exempt from the RFS requirements through December 31, 2010. The (b) (4) qualified as a small refinery that was covered by this temporary exemption.

Pursuant to CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2) small refineries may petition EPA to extend the temporary RFS exemption on the basis that compliance with the RFS requirements will cause "disproportionate economic hardship." Pursuant to these provisions, (b) (4) submitted a petition to EPA dated March 28, 2018 to extend the exemption for the (b) (4) for 2017.

Based on the information submitted in your petition, and after consultation with the Department of Energy, EPA has decided to grant a one-year extension of (b) (4) RFS small refinery temporary exemption. This means that from January 1, 2017 through December 31, 2017, the (b) (4) gasoline and diesel production are not subject to the percentage standards of 40 CFR 80.1405, and (b) (4) is not subject to the requirements of an obligated party for fuel produced at the (b) (4) (b) (4) during that period.

If you have any questions, please contact Byron Bunker of my staff at 734-214-4155.

Sincerely,

Christopher Grundler, Director
Office of Transportation and Air Quality

Enclosure – Decision Document

Grant of Request for Extension of Small Refinery Temporary Exemption Under the Renewable Fuel Standard Program For

(b) (4)

Contains Information Claimed by

(b) (4)

To be Confidential Business Information

Office of Transportation and Air Quality

EPA received a petition from (b) (4) dated March 28, 2018, for a one-year extension of the Renewable Fuel Standard (RFS) small refinery exemption for (b) (4) , refinery (the " (b) (4) ") in 2017. For the reasons described herein, EPA is granting (b) (4) 's request for an extension of the (b) (4) 's RFS small refinery exemption for 2017.

Section 211(o)(9) of the Clean Air Act (CAA) authorizes the Administrator to temporarily exempt small refineries from their renewable fuel volume obligations under the RFS program on the basis of a finding of "disproportionate economic hardship" (DEH). The statute directs EPA, in consultation with the Department of Energy (DOE), to consider the (DOE) Small Refinery Study and "other economic factors" in evaluating small refinery exemption petitions, but CAA section 211(o)(9) leaves the definition of DEH to the Administrator's discretion for purposes of implementing this exemption provision.

After evaluating information submitted by the petitioner, DOE provides a recommendation to EPA on whether a refinery merits exemption from the RFS. As described in its study, DOE assesses the potential for DEH at a refinery on the basis of two sets of metrics. One set assesses structural and economic conditions that could disproportionately impact the refinery (described as "disproportionate impacts" for purposes of DOE's scoring metrics, and also described as "structural" factors or conditions here). The other set assesses economic factors that could cause viability concerns (described as "viability" for purposes of DOE's scoring metrics, and also described as "economic" factors or conditions here).

In previous year decisions, DOE and EPA considered that DEH exists only when a refinery experiences both disproportionate impacts and viability impairment. In response to concerns that the two agencies' threshold for establishing DEH was too stringent, Congress clarified to DOE that DEH can exist if DOE finds that a small refinery is experiencing *either* disproportionate impacts *or* viability impairment. If so, Congress directed DOE to recommend a 50 percent exemption from the RFS. This was relayed in language included in an explanatory statement accompanying the 2016 Appropriations Act that stated: "If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner."[1] Congress then directed EPA to follow DOE's recommendation.[2] (b)(4) [redacted] the (b) (4) (b)(4) [redacted] (b)(4) applied by DOE [redacted] the (b) (4) (b)(4) appli [redacted] (b) (4) (b) (4) (b) (4)).

For the purposes of implementing CAA section 211(o)(9) for 2017 small refinery exemption decisions, EPA has determined that DEH can exist on the basis of adverse structural conditions alone. A difficult year may exacerbate economic problems for small refineries that

[1] Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015). The Explanatory Statement is available at: https://rules.house.gov/bill/114/hr-2029-sa.

[2] Consolidated Appropriations Act, 2017, Pub. L. No. 115-31 (2017); *See also* Senate Report 114-281 ("When making decisions about small refinery exemptions under the RFS program, the Agency is directed to follow DOE's recommendations which are to be based on the original 2011 Small Refinery Exemption Study prepared for Congress and the conference report to division D of the Consolidated Appropriations Act of 2016.").

face disproportionate impacts, resulting in tangible effects including diminished refining margins, reduced profitability, cash flow limitations that can hinder its ability to acquire renewable fuel credits (Renewable Identification Numbers, or RINs) for compliance, and the potential to impair refinery operations. In addition, small refineries sometimes lack access to capital or credit that can also be necessary to achieve compliance.

In its industry-wide analysis, DOE has found that poor access to capital and credit, lack of other business lines, and high diesel production compared to the industry average can suggest a disproportionate structural impact. Poor refining margins, limited ability to blend ethanol, and market competition can suggest a disproportionate economic impact. As noted above, DOE scores the disproportionate structural and economic impacts together as half of its DEH analysis. Here, EPA acknowledges that [redacted] the (b) (4) [redacted] EPA's review of DOE's analysis is in accord with this conclusion. These conditions disadvantage the refinery relative to larger refineries that may not face similar structural challenges.

DOE also assessed economic factors as the second component of DEH. Here, EPA acknowledges that [redacted] the (b) (4) [redacted][3] Therefore, [redacted] the (b) (4) [redacted]

Table 1[4]
DOE Evaluation of (b) (4) (b) (4) Petition

1	Disproportionate Structural Impact Metrics		Score
a	Access to capital/credit	0 = Good access (BB- or above credit rating), 5 = Moderate access (rating in B's) 10 = Poor access (C rating or 50% D/E)	[redacted]
b	Other business lines besides refining and marketing	0 = Other Lines, 10 = No Other Lines	[redacted]
c	Local market acceptance of Renewables	0 = Products accepted, 10 = Product not accepted	
	i E10	0 = High acceptance, 5 = Low acceptance 10= No acceptance	[redacted]
	ii E85	Not scored because of small E85 volumes	
	iii Biodiesel	Not available	
d	Percentage of diesel production	0 = D/(G+D) < Industry Avg. 5 = D/(G+D) > Ind. Avg<40%. 10=D/(G+D) > 40%	[redacted]
e	Subject to exceptional state regulations	0 = not subject, 5= Some barriers for compliance	[redacted]

[3] From DOE recommendation for the (b) (4) transmitted to EPA on May 3, 2018.
[4] The gray-shaded categories were developed as part of the DOE Small Refinery Study, but DOE has chosen not to assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE's explanation regarding why it does not assign scores for the gray-shaded categories.

		10 = subject to exceptional state regulations	
2	**Disproportionate Economic Impact Metrics**		
a	Relative refining margin measure [5]	0 = Above 3 year industry average 5 = Positive, below 3 year industry average 10= Negative	[redacted]
b	Renewable fuel blending (% of production)		
i	Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%	[redacted]
ii	Biodiesel blending (not used)	0 = 1.1% of diesel production, 1 = <1.1%	
iii	Other Advanced Biofuel blending (not used)	0 = some blending, 10 = no blending	
c	In a niche market	0 = niche 5 = moderate niche impact 10 = no niche	[redacted]
d	RINs net revenue or cost [6]	0 = revenue > cost, 10 = revenue < cost	
	Subtotal (average)		[redacted]
	Ranking (subtotal x 0.50)		
3	**Viability Metrics**		
a	Compliance cost eliminates efficiency gains (impairment)	0 = no impact on efficiency, 5 = moderate impact, 10 = impact on efficiency	[redacted]
b	Individual special events	0 = no special event, 5 = moderate event, 10 = special event impacting viability	[redacted]
c	Compliance costs likely to lead to shut down	0 = not likely to shut down, 10 = likely to shut down	[redacted]
	Subtotal (average)		[redacted]
	Ranking (subtotal x 0.50)		

EPA's analysis extends beyond the metrics DOE applies in assessing potential DEH. EPA considers all of the information submitted by a petitioner when it considers "other economic factors" in evaluating a small refinery petition. For example, EPA considers the information submitted by the petitioner that documents or explains relevant economic conditions or business decisions by the petitioner. EPA may also consider other publicly available information regarding the petitioner that informs EPA's evaluation regarding how "other economic factors" may cause a small refinery to experience DEH if required to comply with its RFS obligations.

(b) (4) submitted a petition to EPA on March 28, 2018, for an extension of the RFS small refinery exemption for the (b) (4) for 2017. In support of its petition, (b) (4) submitted financial and other information, including a completed DOE survey form

[5] DOE has calculated refining industry gross margins and net margins for 2014, 2015, and 2016, based on public data. The average industry gross and net margins for these three years were $11.40/bbl and $6.52/bbl, respectively (net margin only includes direct operating expenses, it does not include financial expenses such as interest, and depreciation/amortization). The (b) (4) 's average gross margin and net margin (excluding financial expenses) for 2014-2016 were (b) (4) , respectively.
[6] DOE has not scored this category for any hardship petition evaluations.

PI-588, which specified the factors that (b) (4) believes demonstrate DEH. The petition stated that (b) (4) (b) (4) (b) (4) Also, the (b) (4) (b) (4) Lastly, (b) (4) (b) (4) (b) (4) (b) (4)

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption from compliance with its RFS requirements based on a demonstration by the small refinery of a DEH. As described above, (b) (4) petition presents financial information that documents (b) (4) along with other metrics of poor economic performance in 2017. Based on our review of all of the available information about the (b) (4) and our consultation with DOE, EPA has concluded that the (b) (4) will experience DEH that can be relieved in whole or in part by removing its RFS obligations for 2017. Therefore, EPA is granting (b) (4) request for a temporary extension of the (b) (4) small refinery RFS hardship exemption for 2017.

EPA's decision is consistent with (b)(4) applied by [redacted] the (b) (4) (b)(4) applied [redacted] (b)(4) applied by DOE [redacted] PA has decided to grant 100% relief. As explained above, this decision is appropriate under the statutory authority to consult with DOE, consider the 2011 DOE study, and "other economic factors" and it is consistent with the case law recognizing EPA's independent authority in deciding whether to grant or deny RFS small refinery exemption petitions.[7]

This decision is a final agency action for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1), judicial review of this final agency action may be sought in the United States Court of Appeals for the appropriate circuit. This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.

[7] *Sinclair*, 874 F.3d at 1166; *See also Hermes Consol., LLC v. EPA*, 787 F.3d 568, 574-575 (D.C. Cir. 2015); *Lion Oil Co. v. EPA*, 792 F.3d 978, 982-983 (8th Cir. 2015).

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

March 14, 2019

OFFICE OF
AIR AND RADIATION

(b) (4)

Dear (b) (4)

I am writing in response to the petition from (b) (4) for a one-year extension of the small refinery exemption for 2017 from the requirements of the renewable fuel standard (RFS) program for (b) (4) refinery in (b) (4) As you know, the Clean Air Act (CAA) provided that small refineries would be temporarily exempt from the RFS requirements through December 31, 2010, with an additional two-year extension of that exemption possible through 2012. CAA section 211(o)(9)(A). Small refineries may petition EPA to extend the RFS exemption for the reason of "disproportionate economic hardship." CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2). Pursuant to these provisions, (b) (4)submitted a petition to EPA dated July 19, 2018 to extend the exemption for the (b) (4) for 2017.

Based on the information submitted in your petition, and after consultation with the Department of Energy, EPA has decided to grant a one-year extension of (b) (4) RFS small refinery exemption. This means that from January 1, 2017 through December 31, 2017, the (b) (4) gasoline and diesel production are not subject to the percentage standards of 40 CFR 80.1405, and (b) (4)is not subject to the requirements of an obligated party for fuel produced at the (b) (4) during that period.

If you have any questions, please contact Byron Bunker of my staff at 734-214-4155.

Sincerely,

Ben Hengst, for

Christopher Grundler, Director
Office of Transportation and Air Quality

Enclosure – Decision Document

Grant of Request for Extension of Small Refinery Temporary Exemption Under the Renewable Fuel Standard Program For

(b) (4)

Contains Information Claimed by

(b) (4)

To be Confidential Business Information

Office of Transportation and Air Quality

EPA received a petition from (b) (4) dated July 19, 2018, for a one-year extension of the Renewable Fuel Standard (RFS) small refinery exemption for (b) (4) refinery (the " (b) (4) in 2017. For the reasons described herein, EPA is granting (b) (4) request for an extension of the (b) (4) RFS small refinery exemption for 2017.

Section 211(o)(9) of the Clean Air Act (CAA) authorizes the Administrator to temporarily exempt small refineries from their renewable fuel volume obligations under the RFS program on the basis of a finding of "disproportionate economic hardship" (DEH). The statute directs EPA, in consultation with the Department of Energy (DOE), to consider the (DOE) Small Refinery Study and "other economic factors" in evaluating small refinery exemption petitions, but CAA section 211(o)(9) leaves the definition of DEH to the Administrator's discretion for purposes of implementing this exemption provision.

After evaluating information submitted by the petitioner, DOE provides a recommendation to EPA on whether a refinery merits exemption from the RFS. As described in its study, DOE assesses the potential for DEH at a refinery on the basis of two sets of metrics. One set assesses structural and economic conditions that could disproportionately impact the refinery (described as "disproportionate impacts" for purposes of DOE's scoring metrics, and also described as "structural" factors or conditions here). The other set assesses economic factors that could cause viability concerns (described as "viability" for purposes of DOE's scoring metrics, and also described as "economic" factors or conditions here).

In previous year decisions, DOE and EPA considered that DEH exists only when a refinery experiences both disproportionate impacts and viability impairment. In response to concerns that the two agencies' threshold for establishing DEH was too stringent, Congress clarified to DOE that DEH can exist if DOE finds that a small refinery is experiencing *either* disproportionate impacts *or* viability impairment. If so, Congress directed DOE to recommend a 50 percent exemption from the RFS. This was relayed in language included in an explanatory statement accompanying the 2016 Appropriations Act that stated: "If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner."[1] Congress then directed EPA to follow DOE's recommendation.[2] (b)(4) applied by DOE (b) (4) (b)(4) appl [redacted]
[redacted] (b) (4) (b)(4) applied by DOE (b) (4)
(b)(4) applied by DOE

For the purposes of implementing CAA section 211(o)(9) for 2017 small refinery exemption decisions, EPA has determined that DEH can exist on the basis of adverse structural conditions alone. A difficult year may exacerbate economic problems for small refineries that

[1] Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015). The Explanatory Statement is available at: https://rules.house.gov/bill/114/hr-2029-sa.
[2] Consolidated Appropriations Act, 2017, Pub. L. No. 115-31 (2017); *See also* Senate Report 114-281 ("When making decisions about small refinery exemptions under the RFS program, the Agency is directed to follow DOE's recommendations which are to be based on the original 2011 Small Refinery Exemption Study prepared for Congress and the conference report to division D of the Consolidated Appropriations Act of 2016.").

face disproportionate impacts, resulting in tangible effects including diminished refining margins, reduced profitability, cash flow limitations that can hinder its ability to acquire renewable fuel credits (Renewable Identification Numbers, or RINs) for compliance, and the potential to impair refinery operations. In addition, small refineries sometimes lack access to capital or credit that can also be necessary to achieve compliance.

In its industry-wide analysis, DOE has found that poor access to capital and credit, lack of other business lines, and high diesel production compared to the industry average can suggest a disproportionate structural impact. Poor refining margins, limited ability to blend ethanol, and market competition can suggest a disproportionate economic impact. As noted above, DOE scores the disproportionate structural and economic impacts together as half of its DEH analysis. Here, EPA acknowledges tha [redacted] (b)(4) applied by DOE (b) (4) [redacted] (b)(4) applied by DOE [redacted] EPA's review of DOE's analysis is in accord with this conclusion. These conditions disadvantage the refinery relative to larger refineries that may not face similar structural challenges.

DOE also assessed economic factors as the second component of DEH. Here, EPA acknowledges tha [redacted] (b)(4) applied by DOE (b) (4) [redacted] (b)(4) applied by DOE [redacted][3] [redacted] (b)(4) applied by DOE [redacted] (b) (4) [redacted] (b)(4) applied by DOE

Table 1[4]
DOE Evaluation of (b) (4) Petition for the (b) (4)

1	Disproportionate Structural Impact Metrics		Score
a	Access to capital/credit	0 = Good access (BB- or above credit rating), 5 = Moderate access (rating in B's) 10 = Poor access (C rating or 50% D/E)	[redacted]
b	Other business lines besides refining and marketing	0 = Other Lines, 10 = No Other Lines	[redacted]
c	Local market acceptance of Renewables	0 = Products accepted, 10 = Product not accepted	
	i E10	0 = High acceptance, 5 = Low acceptance 10= No acceptance	[redacted]
	ii E85	Not scored because of small E85 volumes	
	iii Biodiesel	Not available	
d	Percentage of diesel production	0 = D/(G+D) < Industry Avg. 5 = D/(G+D) > Ind. Avg<40%. 10=D/(G+D) > 40%	[redacted]
e	Subject to exceptional state regulations	0 = not subject, 5= Some barriers for compliance 10 = subject to exceptional state regulations	[redacted]

[3] From DOE recommendation for the (b) (4) transmitted to EPA on September 13, 2018.
[4] The gray-shaded categories were developed as part of the DOE Small Refinery Study, but DOE has chosen not to assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE's explanation regarding why it does not assign scores for the gray-shaded categories.

2	**Disproportionate Economic Impact Metrics**		
a	Relative refining margin measure [5]	0 = Above 3 year industry average 5 = Positive, below 3 year industry average 10= Negative	[redacted]
b	Renewable fuel blending (% of production)		
i	Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%	[redacted]
ii	Biodiesel blending (not used)	0 = 1.1% of diesel production, 1 = <1.1%	
iii	Other Advanced Biofuel blending (not used)	0 = some blending, 10 = no blending	
c	In a niche market	0 = niche 5 = moderate niche impact 10 = no niche	[redacted]
d	RINs net revenue or cost [6]	0 = revenue > cost, 10 = revenue < cost	
	Subtotal (average)		[redacted]
	Ranking (subtotal x 0.50)		[redacted]
3	**Viability Metrics**		
a	Compliance cost eliminates efficiency gains (impairment)	0 = no impact on efficiency, 5 = moderate impact, 10 = impact on efficiency	[redacted]
b	Individual special events	0 = no special event, 5 = moderate event, 10 = special event impacting viability	[redacted]
c	Compliance costs likely to lead to shut down	0 = not likely to shut down, 10 = likely to shut down	[redacted]
	Subtotal (average)		[redacted]
	Ranking (subtotal x 0.50)		[redacted]

EPA's analysis extends beyond the metrics DOE applies in assessing potential DEH. EPA considers all of the information submitted by a petitioner when it considers "other economic factors" in evaluating a small refinery petition. For example, EPA considers the information submitted by the petitioner that documents or explains relevant economic conditions or business decisions by the petitioner. EPA may also consider other publicly available information regarding the petitioner that informs EPA's evaluation regarding how "other economic factors" may cause a small refinery to experience DEH if required to comply with its RFS obligations.

(b) (4) submitted a petition to EPA on July 19, 2018, for an extension of the RFS small refinery exemption for the (b) (4) for 2017. In support of its petition, (b) (4) submitted financial and other information, including a completed DOE survey form PI-588, which specified the factors that (b) (4) believes demonstrate DEH. (b) (4) stated that (b) (4)

[5] DOE has calculated refining industry gross margins and net margins for 2014, 2015, and 2016, based on public data. The average industry gross and net margins for these three years were $11.40/barrel and $6.52/barrel, respectively (net margin only includes direct operating expenses, it does not include financial expenses such as interest, and depreciation/amortization). The (b) (4) average gross margin and net margin (excluding financial expenses) for 2014-2016 were (b) (4) and (b) (4), respectively.

[6] DOE has not scored this category for any hardship petition evaluations.

(b) (4) (b) (4) (b) (4) .[7]

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption from compliance with its RFS requirements based on a demonstration by the small refinery of DEH. As described above, (b) (4) petition presents information demonstrating unfavorable structural conditions. (b) (4) petition also presents financial information that documents (b) (4) along with other metrics of economic performance in 2017. Based on our review of all of the available information about the (b) (4) and our consultation with DOE, EPA has concluded that the (b) (4) will experience DEH that can be relieved in whole or in part by removing its RFS obligations for 2017. Therefore, EPA is granting (b) (4) request for a temporary extension of the (b) (4) small refinery RFS hardship exemption for 2017.

EPA's decision is consistent with (b)(4) applied by DOE [redacted] (b) (4) (b)(4) applied by DOE [redacted] EPA has decided to grant 100% relief. As explained above, this decision is appropriate under the statutory authority to consult with DOE, consider the 2011 DOE study, and "other economic factors" and it is consistent with the case law recognizing EPA's independent authority in deciding whether to grant or deny RFS small refinery exemption petitions.[8]

This decision is a final agency action for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1), judicial review of this final agency action may be sought in the United States Court of Appeals for the appropriate circuit. This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.

---

[7] (b) (4) petition at 6.
[8] *Sinclair*, 874 F.3d at 1166; *See also Hermes Consol., LLC v. EPA*, 787 F.3d 568, 574-575 (D.C. Cir. 2015); *Lion Oil Co. v. EPA*, 792 F.3d 978, 982-983 (8th Cir. 2015).

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

March 14, 2019

OFFICE OF
AIR AND RADIATION

(b) (4)

Dear (b) (4)

I am writing in response to the petition from (b) (4) for a one-year extension of the small refinery exemption for 2017 from the requirements of the renewable fuel standard (RFS) program for (b) (4) refinery in (b) (4) (b) (4) As you know, the Clean Air Act (CAA) provided that small refineries would be temporarily exempt from the RFS requirements through December 31, 2010, with an additional two-year extension of that exemption possible through 2012. CAA section 211(o)(9)(A). Small refineries may petition EPA to extend the RFS exemption for the reason of "disproportionate economic hardship." CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2). Pursuant to these provisions, (b) (4) submitted a petition to EPA dated May 2, 2018 to extend the exemption for the (b) (4) for 2017.

Based on the information submitted in your petition, and after consultation with the Department of Energy, EPA has decided to grant a one-year extension of (b) (4) RFS small refinery exemption. This means that from January 1, 2017 through December 31, 2017, the (b) (4) gasoline and diesel production are not subject to the percentage standards of 40 CFR 80.1405, and (b) (4) is not subject to the requirements of an obligated party for fuel produced at the (b) (4) during that period.

If you have any questions, please contact Byron Bunker of my staff at 734-214-4155.

Sincerely,

Ben Hengst, for

Christopher Grundler, Director
Office of Transportation and Air Quality

Enclosure – Decision Document

Grant of Request for Extension of Small Refinery Temporary Exemption Under the Renewable Fuel Standard Program For

(b) (4)

Contains Information Claimed by

(b) (4)

To be Confidential Business Information

Office of Transportation and Air Quality

EPA received a petition from (b) (4) dated May 2, 2018, for a one-year extension of the Renewable Fuel Standard (RFS) small refinery exemption for (b) (4) refinery (the (b) (4) in 2017. For the reasons described herein, EPA is granting (b) (4) request for an extension of the (b) (4) RFS small refinery exemption for 2017.

Section 211(o)(9) of the Clean Air Act (CAA) authorizes the Administrator to temporarily exempt small refineries from their renewable fuel volume obligations under the RFS program on the basis of a finding of "disproportionate economic hardship" (DEH). The statute directs EPA, in consultation with the Department of Energy (DOE), to consider the (DOE) Small Refinery Study and "other economic factors" in evaluating small refinery exemption petitions, but CAA section 211(o)(9) leaves the definition of DEH to the Administrator's discretion for purposes of implementing this exemption provision.

After evaluating information submitted by the petitioner, DOE provides a recommendation to EPA on whether a refinery merits exemption from the RFS. As described in its study, DOE assesses the potential for DEH at a refinery on the basis of two sets of metrics. One set assesses structural and economic conditions that could disproportionately impact the refinery (described as "disproportionate impacts" for purposes of DOE's scoring metrics, and also described as "structural" factors or conditions here). The other set assesses economic factors that could cause viability concerns (described as "viability" for purposes of DOE's scoring metrics, and also described as "economic" factors or conditions here).

In previous year decisions, DOE and EPA considered that DEH exists only when a refinery experiences both disproportionate impacts and viability impairment. In response to concerns that the two agencies' threshold for establishing DEH was too stringent, Congress clarified to DOE that DEH can exist if DOE finds that a small refinery is experiencing *either* disproportionate impacts *or* viability impairment. If so, Congress directed DOE to recommend a 50 percent exemption from the RFS. This was relayed in language included in an explanatory statement accompanying the 2016 Appropriations Act that stated: "If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner."[1] Congress then directed EPA to follow DOE's recommendation.[2] (b)(4) applied by DOE (b) (4) (b)(4) applied by DOE [redacted] (b) (4) (b)(4) applied by DOE (b) (4) (b)(4) applied by DOE [redacted]

For the purposes of implementing CAA section 211(o)(9) for 2017 small refinery exemption decisions, EPA has determined that DEH can exist on the basis of adverse structural conditions alone. A difficult year may exacerbate economic problems for small refineries that

[1] Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015). The Explanatory Statement is available at: https://rules.house.gov/bill/114/hr-2029-sa.

[2] Consolidated Appropriations Act, 2017, Pub. L. No. 115-31 (2017); *See also* Senate Report 114-281 ("When making decisions about small refinery exemptions under the RFS program, the Agency is directed to follow DOE's recommendations which are to be based on the original 2011 Small Refinery Exemption Study prepared for Congress and the conference report to division D of the Consolidated Appropriations Act of 2016.").

face disproportionate impacts, resulting in tangible effects including diminished refining margins, reduced profitability, cash flow limitations that can hinder its ability to acquire renewable fuel credits (Renewable Identification Numbers, or RINs) for compliance, and the potential to impair refinery operations. In addition, small refineries sometimes lack access to capital or credit that can also be necessary to achieve compliance.

In its industry-wide analysis, DOE has found that poor access to capital and credit, lack of other business lines, and high diesel production compared to the industry average can suggest a disproportionate structural impact. Poor refining margins, limited ability to blend ethanol, and market competition can suggest a disproportionate economic impact. As noted above, DOE scores the disproportionate structural and economic impacts together as half of its DEH analysis. Here, EPA acknowledges that (b)(4) applied by DOE (b) (4) (b)(4) applied by DOE [redacted] EPA's review of DOE's analysis is in accord with this conclusion. These conditions disadvantage the refinery relative to larger refineries that may not face similar structural challenges.

DOE also assessed economic factors as the second component of DEH. Here, EPA acknowledges that (b)(4) applied by DOE (b) (4) (b)(4) applied by DOE [redacted][3] (b)(4) applied by DOE (b) (4) (b)(4) applied by DOE

Table 1[4]
DOE Evaluation of (b) (4) s Petition for the (b) (4)

1	Disproportionate Structural Impact Metrics		Score
a	Access to capital/credit	0 = Good access (BB- or above credit rating), 5 = Moderate access (rating in B's) 10 = Poor access (C rating or 50% D/E)	[redacted]
b	Other business lines besides refining and marketing	0 = Other Lines, 10 = No Other Lines	[redacted]
c	Local market acceptance of Renewables	0 = Products accepted, 10 = Product not accepted	
	i E10	0 = High acceptance, 5 = Low acceptance 10= No acceptance	[redacted]
	ii E85	Not scored because of small E85 volumes	
	iii Biodiesel	Not available	
d	Percentage of diesel production	0 = D/(G+D) < Industry Avg. 5 = D/(G+D) > Ind. Avg<40%. 10=D/(G+D) > 40%	[redacted]
e	Subject to exceptional state regulations	0 = not subject, 5= Some barriers for compliance	[redacted]

[3] From DOE recommendation for the (b) (4) transmitted to EPA on September 13, 2018.
[4] The gray-shaded categories were developed as part of the DOE Small Refinery Study, but DOE has chosen not to assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE's explanation regarding why it does not assign scores for the gray-shaded categories.

	10 = subject to exceptional state regulations	
2 Disproportionate Economic Impact Metrics		
a Relative refining margin measure [5]	0 = Above 3 year industry average 5 = Positive, below 3 year industry average 10= Negative	[redacted]
b Renewable fuel blending (% of production)		
i Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%	[redacted]
ii Biodiesel blending (not used)	0 = 1.1% of diesel production, 1 = <1.1%	
iii Other Advanced Biofuel blending (not used)	0 = some blending, 10 = no blending	
c In a niche market	0 = niche 5 = moderate niche impact 10 = no niche	[redacted]
d RINs net revenue or cost [6]	0 = revenue > cost, 10 = revenue < cost	
Subtotal (average)		[redacted]
Ranking (subtotal x 0.50)		[redacted]
3 Viability Metrics		
a Compliance cost eliminates efficiency gains (impairment)	0 = no impact on efficiency, 5 = moderate impact, 10 = impact on efficiency	[redacted]
b Individual special events	0 = no special event, 5 = moderate event, 10 = special event impacting viability	[redacted]
c Compliance costs likely to lead to shut down	0 = not likely to shut down, 10 = likely to shut down	[redacted]
Subtotal (average)		[redacted]
Ranking (subtotal x 0.50)		[redacted]

EPA's analysis extends beyond the metrics DOE applies in assessing potential DEH. EPA considers all of the information submitted by a petitioner when it considers "other economic factors" in evaluating a small refinery petition. For example, EPA considers the information submitted by the petitioner that documents or explains relevant economic conditions or business decisions by the petitioner. EPA may also consider other publicly available information regarding the petitioner that informs EPA's evaluation regarding how "other economic factors" may cause a small refinery to experience DEH if required to comply with its RFS obligations.

(b) (4) submitted a petition to EPA on May 2, 2018, for an extension of the RFS small refinery exemption for the (b) (4) for 2017. In support of its petition, (b) (4)

[5] DOE has calculated refining industry gross margins and net margins for 2014, 2015, and 2016, based on public data. The average industry gross and net margins for these three years were $11.40/bbl and $6.52/bbl, respectively (net margin only includes direct operating expenses, it does not include financial expenses such as interest, and depreciation/amortization). The (b) (4) average gross margin and net margin (excluding financial expenses) for 2014-2016 were (b) (4) and (b) (4) , respectively.

[6] DOE has not scored this category for any hardship petition evaluations.

submitted financial and other information, including a completed DOE survey form PI-588, which specified the factors that (b) (4) believes demonstrate DEH. The petition stated that (b) (4) (b) (4) (b) (4) .[7]

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption from compliance with its RFS requirements based on a demonstration by the small refinery of a DEH. As described above, (b) (4) s petition presents information that documents unfavorable structural conditions, along with financial information that documents economic performance in 2017. Based on our review of all of the available information about the (b) (4) and our consultation with DOE, EPA has concluded that the (b) (4) will experience DEH that can be relieved in whole or in part by removing its RFS obligations for 2017. Therefore, EPA is granting (b) (4) s request for a temporary extension of the (b) (4) small refinery RFS hardship exemption for 2017.

EPA's decision is consistent with (b)(4) applied by DOE [redacted] that the (b) (4) (b)(4) applied by DOE [redacted] EPA has decided to grant 100% relief. As explained above, this decision is appropriate under the statutory authority to consult with DOE, consider the 2011 DOE study, and "other economic factors" and it is consistent with the case law recognizing EPA's independent authority in deciding whether to grant or deny RFS small refinery exemption petitions.[8]

This decision is a final agency action for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1), judicial review of this final agency action may be sought in the United States Court of Appeals for the appropriate circuit. This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.

---

[7] (b) (4) petition at 6.

[8] *Sinclair*, 874 F.3d at 1166; *See also Hermes Consol., LLC v. EPA*, 787 F.3d 568, 574-575 (D.C. Cir. 2015); *Lion Oil Co. v. EPA*, 792 F.3d 978, 982-983 (8th Cir. 2015).

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
NATIONAL VEHICLE AND FUEL EMISSIONS LABORATORY
2565 PLYMOUTH ROAD
ANN ARBOR, MICHIGAN 48105-2498

OFFICE OF
AIR AND RADIATION

March 28,2019

Mr. Jeff Beecher
Manager of Environmental Health & Safety
San Joaquin Refining Co., Inc.
3542 Shell Street
Bakersfield, CA 93388

Dear Mr. Beecher:

I am writing in response to the petition from San Joaquin Refining Co., Inc. ("SJR") for a one-year extension of the small refinery exemption for 2017 from the requirements of the renewable fuel standard (RFS) program for SJR's refinery in Bakersfield, California (the "Bakersfield Refinery"). As you know, the Clean Air Act (CAA) provided that small refineries would be temporarily exempt from the RFS requirements through December 31, 2010, with an additional two-year extension of that exemption possible through 2012. CAA section 211(o)(9)(A). Small refineries may petition EPA to extend the RFS exemption for the reason of "disproportionate economic hardship." CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2). Pursuant to these provisions, SJR submitted a petition to EPA dated March 19, 2019, to extend the exemption for the Bakersfield Refinery for 2017.

Based on the information submitted in your petition, and after consultation with the Department of Energy, EPA has decided to grant a one-year extension of SJR's RFS small refinery exemption. This means that from January 1, 2017 through December 31, 2017, the Bakersfield Refinery's gasoline and diesel production are not subject to the percentage standards of 40 CFR 80.1405, and SJR is not subject to the requirements of an obligated party for fuel produced at the Bakersfield Refinery during that period.

If you have any questions, please contact Byron Bunker of my staff at 734-214-4155.

Sincerely,

Ben Hengst, for

Christopher Grundler, Director
Office of Transportation and Air Quality

Enclosure – Decision Document

Grant of Request for Extension of Small Refinery Temporary Exemption Under the Renewable Fuel Standard Program For San Joaquin Refining Co., Inc.'s Bakersfield, CA, Refinery

Contains Information Claimed by San Joaquin Refining Co., Inc. To be Confidential Business Information

Office of Transportation and Air Quality

EPA received a petition from San Joaquin Refining Co., Inc. ("SJR") dated March 19, 2019, for a one-year extension of the Renewable Fuel Standard (RFS) small refinery exemption for SJR's Bakersfield, CA, refinery (the "Bakersfield Refinery") in 2017. For the reasons described herein, EPA is granting SJR's request for an extension of the Bakersfield Refinery's RFS small refinery exemption for 2017.

Section 211(o)(9) of the Clean Air Act (CAA) authorizes the Administrator to temporarily exempt small refineries from their renewable fuel volume obligations under the RFS program on the basis of a finding of "disproportionate economic hardship" (DEH). The statute directs EPA, in consultation with the Department of Energy (DOE), to consider the (DOE) Small Refinery Study and "other economic factors" in evaluating small refinery exemption petitions, but CAA section 211(o)(9) leaves the definition of DEH to the Administrator's discretion for purposes of implementing this exemption provision.

After evaluating information submitted by the petitioner, DOE provides a recommendation to EPA on whether a refinery merits exemption from the RFS. As described in its study, DOE assesses the potential for DEH at a refinery on the basis of two sets of metrics. One set assesses structural and economic conditions that could disproportionately impact the refinery (described as "disproportionate impacts" for purposes of DOE's scoring metrics, and also described as "structural" factors or conditions here). The other set assesses economic factors that could cause viability concerns (described as "viability" for purposes of DOE's scoring metrics, and also described as "economic" factors or conditions here).

In previous year decisions, DOE and EPA considered that DEH exists only when a refinery experiences both disproportionate impacts and viability impairment. In response to concerns that the two agencies' threshold for establishing DEH was too stringent, Congress clarified to DOE that DEH can exist if DOE finds that a small refinery is experiencing *either* disproportionate impacts *or* viability impairment. If so, Congress directed DOE to recommend a 50 percent exemption from the RFS. This was relayed in language included in an explanatory statement accompanying the 2016 Appropriations Act that stated: "If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner."[1] Congress then directed EPA to follow DOE's recommendation.[2] [redacted] Bakersfield Refinery's [redacted]

For the purposes of implementing CAA section 211(o)(9) for 2017 small refinery exemption decisions, EPA has determined that DEH can exist on the basis of adverse structural conditions alone. A difficult year may exacerbate economic problems for small refineries that

[1] Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015). The Explanatory Statement is available at: https://rules.house.gov/bill/114/hr-2029-sa.
[2] Consolidated Appropriations Act, 2017, Pub. L. No. 115-31 (2017); *See also* Senate Report 114-281 ("When making decisions about small refinery exemptions under the RFS program, the Agency is directed to follow DOE's recommendations which are to be based on the original 2011 Small Refinery Exemption Study prepared for Congress and the conference report to division D of the Consolidated Appropriations Act of 2016.").

face disproportionate impacts, resulting in tangible effects including diminished refining margins, reduced profitability, cash flow limitations that can hinder its ability to acquire renewable fuel credits (Renewable Identification Numbers, or RINs) for compliance, and the potential to impair refinery operations. In addition, small refineries sometimes lack access to capital or credit that can also be necessary to achieve compliance.

In its industry-wide analysis, DOE has found that poor access to capital and credit, lack of other business lines, and high diesel production compared to the industry average can suggest a disproportionate structural impact. Poor refining margins, limited ability to blend ethanol, and market competition can suggest a disproportionate economic impact. As noted above, DOE scores the disproportionate structural and economic impacts together as half of its DEH analysis. Here, EPA acknowledges that [redacted] Bakersfield Refinery d[redacted] EPA's review of DOE's analysis is in accord with this conclusion. These conditions disadvantage the refinery relative to larger refineries that may not face similar structural challenges.

DOE also assessed economic factors as the second component of DEH. Here, EPA acknowledges that [redacted] Bakersfield Refinery [redacted][3] Therefore, [redacted] Bakersfield Refinery [redacted]

Table 1[4]
DOE Evaluation of the Bakersfield Refinery's Petition

			Score
1	**Disproportionate Structural Impact Metrics**		
a	Access to capital/credit	0 = Good access (BB- or above credit rating), 5 = Moderate access (rating in B's) 10 = Poor access (C rating or 50% D/E)	Ref
b	Other business lines besides refining and marketing	0 = Other Lines, 10 = No Other Lines	Ref
c	Local market acceptance of Renewables	0 = Products accepted, 10 = Product not accepted	
	i E10	0 = High acceptance, 5 = Low acceptance 10= No acceptance	Ref
	ii E85	Not scored because of small E85 volumes	
	iii Biodiesel	Not available	
d	Percentage of diesel production	0 = D/(G+D) < Industry Avg. 5 = D/(G+D) > Ind. Avg<40%. 10=D/(G+D) > 40%	Refer t
e	Subject to exceptional state regulations	0 = not subject, 5= Some barriers for compliance	Refer t

[3] From DOE recommendation for the Bakersfield Refinery transmitted to EPA on March 28, 2019.
[4] The gray-shaded categories were developed as part of the DOE Small Refinery Study, but DOE has chosen not to assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE's explanation regarding why it does not assign scores for the gray-shaded categories.

		10 = subject to exceptional state regulations	
2	**Disproportionate Economic Impact Metrics**		
a	Relative refining margin measure [5]	0 = Above 3 year industry average 5 = Positive, below 3 year industry average 10= Negative	Ref
b	Renewable fuel blending (% of production)		
	i Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%	Refer t
	ii Biodiesel blending (not used)	0 = 1.1% of diesel production, 1 = <1.1%	
	iii Other Advanced Biofuel blending (not used)	0 = some blending, 10 = no blending	
c	In a niche market	0 = niche 5 = moderate niche impact 10 = no niche	Ref
d	RINs net revenue or cost [6]	0 = revenue > cost, 10 = revenue < cost	
	Subtotal (average)		Refer to
	Ranking (subtotal x 0.50)		Refer to
3	**Viability Metrics**		
a	Compliance cost eliminates efficiency gains (impairment)	0 = no impact on efficiency, 5 = moderate impact, 10 = impact on efficiency	Ref
b	Individual special events	0 = no special event, 5 = moderate event, 10 = special event impacting viability	Ref
c	Compliance costs likely to lead to shut down	0 = not likely to shut down, 10 = likely to shut down	Ref
	Subtotal (average)		Refer to
	Ranking (subtotal x 0.50)		Refer to

EPA's analysis extends beyond the metrics DOE applies in assessing potential DEH. EPA considers all of the information submitted by a petitioner when it considers "other economic factors" in evaluating a small refinery petition. For example, EPA considers the information submitted by the petitioner that documents or explains relevant economic conditions or business decisions by the petitioner. EPA may also consider other publicly available information regarding the petitioner that informs EPA's evaluation regarding how "other economic factors" may cause a small refinery to experience DEH if required to comply with its RFS obligations.

SJR submitted a petition to EPA on March 19, 2019, for an extension of the RFS small refinery exemption for the Bakersfield Refinery for 2017. In support of its petition, SJR

[5] DOE has calculated refining industry gross margins and net margins for 2014, 2015, and 2016, based on public data. The average industry gross and net margins for these three years were \$11.40/bbl and \$6.52/bbl, respectively (net margin only includes direct operating expenses, it does not include financial expenses such as interest, and depreciation/amortization). The Bakersfield Refinery's average gross margin and net margin (excluding financial expenses) for 2014-2016 were (b) (4) and (b) (4) , respectively.
[6] DOE has not scored this category for any hardship petition evaluations.

submitted financial and other information, including a completed DOE survey form PI-588, which specified the factors that SJR believes demonstrate DEH. The petition stated that the Bakersfield Refinery (b) (4) (b) (4)

Bakersfield Refinery (b) (4)
.[8] The SJR (b) (4)
SJR (b) (4) .[9] (b) (4)
Bakersfield Refinery (b) (4)

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption from compliance with its RFS requirements based on a demonstration by the small refinery of a DEH. As described above, SJR's petition presents financial information that documents (b) (4) Bakersfield Refinery (b) (4) along with other metrics of poor economic performance in 2017. Based on our review of all of the available information about the Bakersfield Refinery, and our consultation with DOE, EPA has concluded that the Bakersfield Refinery will experience DEH that can be relieved in whole or in part by removing its RFS obligations for 2017. Therefore, EPA is granting the Bakersfield Refinery's request for a temporary extension of the Bakersfield Refinery's small refinery RFS hardship exemption for 2017.

EPA's decision is consistent with (b)(4) applied by DOE Bakersfield Refinery's (b)(4) applied by DOE (b)(4) applied by DOE EPA has decided to grant 100% relief. As explained above, this decision is appropriate under the statutory authority to consult with DOE, consider the 2011 DOE study, and "other economic factors" and it is consistent with the case law recognizing EPA's independent authority in deciding whether to grant or deny RFS small refinery exemption petitions.[10]

This decision is a final agency action for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1), judicial review of this final agency action may be sought in the United States Court of Appeals for the appropriate circuit. This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.

[7] Petition at 10.
[8] Petition at 10.
[9] Petition at 11.
[10] *Sinclair*, 874 F.3d at 1166; *See also Hermes Consol., LLC v. EPA*, 787 F.3d 568, 574-575 (D.C. Cir. 2015); *Lion Oil Co. v. EPA*, 792 F.3d 978, 982-983 (8th Cir. 2015).

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
NATIONAL VEHICLE AND FUEL EMISSIONS LABORATORY
2565 PLYMOUTH ROAD
ANN ARBOR, MICHIGAN 48105-2498

(b) (4)

NOV 01 2017

OFFICE OF
AIR AND RADIATION

Dear (b) (4)

I am writing in response to the petition from the (b) (4) for a one-year extension of the small refinery exemption for 2016 from the requirements of the renewable fuel standard (RFS) program for the (b) (4) As you know, the Clean Air Act (CAA) provided that small refineries would be temporarily exempt from the RFS requirements through December 31, 2010. (b) (4) qualifies as a small refinery that was covered by this temporary exemption.

Pursuant to CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2), small refineries may petition EPA to extend the temporary RFS exemption on the basis that compliance with the RFS requirements will cause "disproportionate economic hardship." Pursuant to these provisions, (b) (4) submitted a petition to EPA dated May 16, 2017, to extend the exemption for the (b) (4) (b) (4) for 2016.

Based on the information in your petition, and after consultation with the Department of Energy, EPA has decided to grant a one-year extension of (b) (4) RFS small refinery temporary exemption. This means that from January 1, 2016, through December 31, 2016, (b) (4) gasoline and diesel production is not subject to the percentage standards of 40 CFR 80.1405, and (b) (4) is not subject to the requirements of an obligated party for fuel produced at (b) (4) during that period.

If you have any questions, please contact Byron Bunker of my staff at 734-214-4155.

Sincerely,

Christopher Grundler, Director
Office of Transportation and Air Quality

Attachment

Grant of Request for Extension of Small Refinery Temporary Exemption Under the Renewable Fuel Standards Program For

(b) (4)

Contains Information Claimed by

(b) (4)

To be Confidential Business Information

Office of Transportation and Air Quality

EPA received a petition from (b) (4)
dated May 16, 2017, for a one-year extension of the Renewable Fuel Standard (RFS) small refinery exemption for the (b) (4) for (b) (4) 2016 RFS obligations. For the reasons described herein, EPA is granting (b) (4) request for an extension of (b) (4) RFS small refinery exemption for 2016.

Section 211(o)(9) of the Clean Air Act (CAA) authorizes the Administrator to temporarily exempt small refineries from their renewable fuel volume obligations under the RFS program on the basis of a finding of "disproportionate economic hardship" (DEH). The statute directs EPA, in consultation with the Department of Energy (DOE), to consider the (DOE) Small Refinery Study and "other economic factors" in evaluating small refinery exemption petitions, but CAA section 211(o)(9) leaves the definition of DEH to the Administrator's discretion for purposes of implementing this exemption provision.

After evaluating information submitted by the petitioner, DOE provides a recommendation to EPA on whether a refinery merits exemption from RFS. As described in its study, DOE assesses the potential for DEH at a refinery on the basis of two sets of metrics. One set assesses structural and economic conditions that could disproportionately impact the refinery, (described as "disproportionate impacts" for purposes of DOE's scoring metrics, and also described as "structural" factors or conditions here). The other set assesses economic factors that could cause viability concerns (described as "viability" for purposes of DOE's scoring metrics, and also described as "economic" factors or conditions here).

In earlier decisions, DOE and EPA considered that DEH exists only when a refinery experiences both disproportionate impacts and viability impairment. In response to concerns that the two agencies' threshold for establishing DEH was too stringent, Congress clarified to DOE that DEH can exist if DOE finds that a small refinery is experiencing *either* disproportionate impacts *or* viability impairment. If so, Congress directed DOE to recommend a 50 percent exemption from the RFS. This is due to language included in an explanatory statement accompanying the 2016 Appropriations Act that stated: "If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner."[1] [redacted] (b) (4) [redacted]

[redacted] (b) (4) [redacted] (b) (4) [redacted]

(b)(4) CBI

(b)(4) CBI

[1] Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015). The Explanatory Statement is available at: https://rules.house.gov/bill/114/hr-2029-sa.
(b)(4)
[3] *Id*. at 1221.

(b)(4) CBI

(b)(4) CBI

For the purposes of implementing CAA section 211(o)(9) for 2016 small refinery exemption decisions, EPA has determined that DEH can exist on the basis of adverse structural conditions alone. A difficult year for the refining industry as a whole may exacerbate economic problems for small refineries that face disproportionate impacts. Throughout the industry, refineries reported lower net refining margins in 2016. This industry-wide downward trend can result in tangible effects on small refineries with adverse structural conditions, including diminished refining margins, reduced profitability, cash flow limitations that can hinder its ability to acquire renewable fuel credits (Renewable Identification Numbers, or RINs) for compliance, and the potential to impair refinery operations. In addition, small refineries sometimes lack access to capital or credit that can also be necessary to achieve compliance.

In its industry-wide analysis, DOE has found that poor access to capital and credit, lack of other business lines, and high diesel production compared to the industry average can suggest a disproportionate structural impact. Poor refining margins, limited ability to blend ethanol, and market competition can suggest a disproportionate economic impact. As noted above, DOE scores the disproportionate structural and economic impacts together as half of its DEH analysis. Here, EPA acknowledges that (b)(4) applied by DOE (b) (4) (b)(4) applied by DOE [redacted] EPA's review of DOE's analysis is in accord with this conclusion. These conditions disadvantage the refinery relative to larger refineries that may not face similar structural challenges.

DOE also assessed economic factors as the second component of DEH. Here, EPA acknowledges tha (b)(4) applied by DOE (b) (4) (b)(4) applied by DOE [redacted][5] Therefore, (b)(4) applied by DOE (b) (4) (b)(4) applied by DOE [redacted]

Table 1[6]
DOE Evaluation of (b) (4) Petition

1	Disproportionate Structural Impact Metrics		Score
a	Access to capital/credit	0 = Good access (BB- or above credit rating), 5 = Moderate access (rating in B's) 10 = Poor access (C rating or 50% D/E)	[redacted]
b	Other business lines besides refining and marketing	0 = Other Lines, 10 = No Other Lines	[redacted]

[4] *Id.* at 1213.
[5] From DOE recommendation for (b) (4) transmitted to EPA on October 6, 2017.
[6] The gray-shaded categories were developed as part of the DOE Small Refinery Study, but DOE has chosen not to assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE's explanation regarding why it does not assign scores for the gray-shaded categories.

c	Local market acceptance of Renewables	0 = Products accepted, 10 = Product not accepted	
	i E10	0 = High acceptance, 5 = Low acceptance 10= No acceptance	[redacted]
	ii E85	Not scored because of small E85 volumes	
	iii Biodiesel	Not available	
d	Percentage of diesel production	0 = D/(G+D) < Industry Avg. 5 = D/(G+D) > Ind. Avg<40%. 10=D/(G+D) > 40%	[redacted]
e	Subject to exceptional state regulations	0 = not subject, 5= Some barriers for compliance 10 = subject to exceptional state regulations	[redacted]
2	**Disproportionate Economic Impact Metrics**		
a	Relative refining margin measure [7]	0 = Above 3 year industry average 5 = Positive, below 3 year industry average 10= Negative	[redacted]
b	Renewable fuel blending (% of production)		
	i Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%	[redacted]
	ii Biodiesel blending (not used)	0 = 1.1% of diesel production, 1 = <1.1%	
	iii Other Advanced Biofuel blending (not used)	0 = some blending, 10 = no blending	
c	In a niche market	0 = niche 5 = moderate niche impact 10 = no niche	[redacted]
d	RINs net revenue or cost [8]	0 = revenue > cost, 10 = revenue < cost	
	Subtotal (average)		[redacted]
	Ranking (subtotal x 0.50)		[redacted]
3	**Viability Metrics**		
a	Compliance cost eliminates efficiency gains (impairment)	0 = no impact on efficiency, 5 = moderate impact, 10 = impact on efficiency	[redacted]
b	Individual special events	0 = no special event, 5 = moderate event, 10 = special event impacting viability	[redacted]
c	Compliance costs likely to lead to shut down	0 = not likely to shut down, 10 = likely to shut down	[redacted]
	Subtotal (average)		[redacted]
	Ranking (subtotal x 0.50)		[redacted]

[7] DOE has calculated refining industry gross margins and net margins for 2014, 2015, and 2016, based on public data. The average industry gross and net margins for these three years were $11.40/bbl and $6.52/bbl, respectively (net margin only includes direct operating expenses, it does not include financial expenses such as interest, and depreciation/amortization). (b) (4) average gross margin and net margin (excluding financial expenses) for 2014-2016 were (b) (4) and (b) (4) , respectively.

[8] DOE has not scored this category for any hardship petition evaluations.

(b)(4) applied by DOE is only one factor in EPA's evaluation regarding whether to grant or deny a petition for a small refinery. EPA's analysis extends beyond the metrics DOE applies in assessing potential DEH. EPA considers all of the information submitted by a petitioner when it considers "other economic factors" in evaluating a small refinery petition. For example, EPA considers the information submitted by the petitioner that documents or explains relevant economic conditions or business decisions by the petitioner. EPA may also consider other publicly available information regarding the petitioner that informs EPA's evaluation regarding how "other economic factors" may cause a small refinery to experience DEH if required to comply with its RFS obligations.

(b) (4) submitted a petition to EPA on May 16, 2017, for an extension of the RFS small refinery exemption for (b) (4) for 2016. In support of its petition, (b) (4) submitted a completed DOE survey form PI-588, which specified the factors that (b) (4) believes demonstrate DEH. The petition stated that (b) (4) [9] The petition further noted that (b) (4) .[10] (b) (4) further reported (b) (4) .[11] (b) (4) also reported (b) (4) .[12] (b) (4) stated that about (b) (4) .[13] (b) (4) stated in its petition that (b) (4) .[14]

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption from compliance with its RFS requirements based on a demonstration by the small refinery of a DEH. As described above, (b) (4) petition presents financial information that documents (b) (4) along with other metrics of poor economic performance in 2016. Based on our review of all of the available information about (b) (4), and our consultation with DOE, EPA has concluded that (b) (4) will experience DEH that can be relieved in whole or in part by removing its RFS compliance obligations for 2016. Therefore, EPA is granting (b) (4) request for a temporary extension of (b) (4) small refinery RFS hardship exemption for 2016.

EPA's decision is consistent with (b)(4) applied by DOE (b) (4) (b)(4) applied by DOE (b)(4) applied by DOE EPA has decided to grant 100% relief. As explained above, this decision is appropriate under the statutory authority to consult with DOE, consider the 2011 DOE study, and "other economic factors" and it is consistent with the case law

---

[9] (b) (4) Petition at 5.
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] (b) (4) Petition at 6-7.
[14] (b) (4) Petition Exhibit 3.

recognizing EPA's independent authority in deciding whether to grant or deny RFS small refinery exemption petitions.[15]

This decision is a final agency action for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1), judicial review of this final agency action may be sought in the United States Court of Appeals for the appropriate circuit. This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.

[15] *Sinclair*, 867 F.3d at 1218; *See also Hermes Consol., LLC v. EPA*, 787 F.3d 568, 574-575 (D.C. Cir. 2015); *Lion Oil Co. v. EPA*, 792 F.3d 978, 982-983 (8th Cir. 2015).

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
AIR AND RADIATION

MAR 2 3 2018

(b) (4)

Dear B(4)

I am writing in response to the petition from the (b) (4) for a one-year extension of the small refinery exemption for 2017 from the requirements of the Renewable Fuel Standard (RFS) program for (b) (4) refinery in (b) (4) As you know, the Clean Air Act (CAA) provided that small refineries would be temporarily exempt from the RFS requirements through December 31, 2010. The (b) (4) qualified as a small refinery that was covered by this temporary exemption.

Pursuant to CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2) small refineries may petition EPA to extend the temporary RFS exemption on the basis that compliance with the RFS requirements will cause "disproportionate economic hardship." Pursuant to these provisions, (b) (4) submitted a petition to EPA dated December 21, 2017, to extend the exemption for the (b) (4) for 2017.

Based on the information submitted in your petition, and after consultation with the Department of Energy, EPA has decided to grant a one-year extension of (b) (4) RFS small refinery temporary exemption. This means that from January 1, 2017, through December 31, 2017, the (b) (4) gasoline and diesel production are not subject to the percentage standards of 40 CFR 80.1405, and (b) (4) is not subject to the requirements of an obligated party for fuel produced at the (b) (4) during that period.

If you have any questions, please contact Byron Bunker of my staff at 734-214-4155.

Sincerely,

Christopher Grundler, Director
Office of Transportation and Air Quality

Enclosure – Decision Document

Grant of Request for Extension of Small Refinery Temporary Exemption Under the Renewable Fuel Standard Program For

(b) (4)

Contains Information Claimed by

(b) (4)

To be Confidential Business Information

Office of Transportation and Air Quality

EPA received a petition from (b) (4) dated December 21, 2017, for a one-year extension of the Renewable Fuel Standard (RFS) small refinery exemption for the (b) (4) in (b) (4) in 2017. For the reasons described herein, EPA is granting (b) (4) request for an extension of (b) (4) RFS small refinery exemption for 2017.

Section 211(o)(9) of the Clean Air Act (CAA) authorizes the Administrator to temporarily exempt small refineries from their renewable fuel volume obligations under the RFS program on the basis of a finding of "disproportionate economic hardship" (DEH). The statute directs EPA, in consultation with the Department of Energy (DOE), to consider the (DOE) Small Refinery Study and "other economic factors" in evaluating small refinery exemption petitions, but CAA section 211(o)(9) leaves the definition of DEH to the Administrator's discretion for purposes of implementing this exemption provision.

After evaluating information submitted by the petitioner, DOE provides a recommendation to EPA on whether a refinery merits exemption from the RFS. As described in its study, DOE assesses the potential for DEH at a refinery on the basis of two sets of metrics. One set assesses structural and economic conditions that could disproportionately impact the refinery (described as "disproportionate impacts" for purposes of DOE's scoring metrics, and also described as "structural" factors or conditions here). The other set assesses economic factors that could cause viability concerns (described as "viability" for purposes of DOE's scoring metrics, and also described as "economic" factors or conditions here).

In previous year decisions, DOE and EPA considered that DEH exists only when a refinery experiences both disproportionate impacts and viability impairment. In response to concerns that the two agencies' threshold for establishing DEH was too stringent, Congress clarified to DOE that DEH can exist if DOE finds that a small refinery is experiencing *either* disproportionate impacts *or* viability impairment. If so, Congress directed DOE to recommend a 50 percent exemption from the RFS. This was relayed in language included in an explanatory statement accompanying the 2016 Appropriations Act that stated: "If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner."[1] Congress then directed EPA to follow DOE's recommendation.[2] [redacted] (b) (4) [redacted] (b) (4) [redacted] (b) (4) [redacted]

For the purposes of implementing CAA section 211(o)(9) for 2017 small refinery exemption decisions, EPA has determined that DEH can exist on the basis of adverse structural conditions alone. A difficult year may exacerbate economic problems for small refineries that face disproportionate impacts, resulting in tangible effects including diminished refining

---

[1] Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015). The Explanatory Statement is available at: https://rules.house.gov/bill/114/hr-2029-sa.

[2] Consolidated Appropriations Act, 2017, Pub. L. No. 115-31 (2017); *See also* Senate Report 114-281 ("When making decisions about small refinery exemptions under the RFS program, the Agency is directed to follow DOE's recommendations which are to be based on the original 2011 Small Refinery Exemption Study prepared for Congress and the conference report to division D of the Consolidated Appropriations Act of 2016.").

margins, reduced profitability, cash flow limitations that can hinder its ability to acquire renewable fuel credits (Renewable Identification Numbers, or RINs) for compliance, and the potential to impair refinery operations. In addition, small refineries sometimes lack access to capital or credit that can also be necessary to achieve compliance.

In its industry-wide analysis, DOE has found that poor access to capital and credit, lack of other business lines, and high diesel production compared to the industry average can suggest a disproportionate structural impact. Poor refining margins, limited ability to blend ethanol, and market competition can suggest a disproportionate economic impact. As noted above, DOE scores the disproportionate structural and economic impacts together as half of its DEH analysis. Here, EPA acknowledges that [redacted] (b) (4) [redacted] EPA's review of DOE's analysis is in accord with this conclusion. These conditions disadvantage the refinery relative to larger refineries that may not face similar structural challenges.

DOE also assessed economic factors as the second component of DEH. Here, EPA acknowledges that [redacted] (b) (4) [redacted][3] Therefore, [redacted] (b) (4) [redacted]

Table 1[4]
DOE Evaluation of (b) (4) Petition

1	Disproportionate Structural Impact Metrics		Score
a	Access to capital/credit	0 = Good access (BB- or above credit rating), 5 = Moderate access (rating in B's) 10 = Poor access (C rating or 50% D/E)	[redacted]
b	Other business lines besides refining and marketing	0 = Other Lines, 10 = No Other Lines	[redacted]
c	Local market acceptance of Renewables	0 = Products accepted, 10 = Product not accepted	
	i E10	0 = High acceptance, 5 = Low acceptance 10= No acceptance	[redacted]
	ii E85	Not scored because of small E85 volumes	
	iii Biodiesel	Not available	
d	Percentage of diesel production	0 = D/(G+D) < Industry Avg. 5 = D/(G+D) > Ind. Avg<40%. 10=D/(G+D) > 40%	[redacted]
e	Subject to exceptional state regulations	0 = not subject, 5= Some barriers for compliance 10 = subject to exceptional state regulations	[redacted]

[3] From DOE recommendation for (b) (4) transmitted to EPA on February 22, 2018.
[4] The gray-shaded categories were developed as part of the DOE Small Refinery Study, but DOE has chosen not to assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE's explanation regarding why it does not assign scores for the gray-shaded categories.

2	**Disproportionate Economic Impact Metrics**		
a	Relative refining margin measure [5]	0 = Above 3 year industry average 5 = Positive, below 3 year industry average 10= Negative	[redacted]
b	Renewable fuel blending (% of production)		
	i Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%	[redacted]
	ii Biodiesel blending (not used)	0 = 1.1% of diesel production, 1 = <1.1%	
	iii Other Advanced Biofuel blending (not used)	0 = some blending, 10 = no blending	
c	In a niche market	0 = niche 5 = moderate niche impact 10 = no niche	[redacted]
d	RINs net revenue or cost [6]	0 = revenue > cost, 10 = revenue < cost	
	Subtotal (average)		[redacted]
	Ranking (subtotal x 0.50)		[redacted]
3	**Viability Metrics**		
a	Compliance cost eliminates efficiency gains (impairment)	0 = no impact on efficiency, 5 = moderate impact, 10 = impact on efficiency	[redacted]
b	Individual special events	0 = no special event, 5 = moderate event, 10 = special event impacting viability	[redacted]
c	Compliance costs likely to lead to shut down	0 = not likely to shut down, 10 = likely to shut down	[redacted]
	Subtotal (average)		[redacted]
	Ranking (subtotal x 0.50)		[redacted]

EPA's analysis extends beyond the metrics DOE applies in assessing potential DEH. EPA considers all of the information submitted by a petitioner when it considers "other economic factors" in evaluating a small refinery petition. For example, EPA considers the information submitted by the petitioner that documents or explains relevant economic conditions or business decisions by the petitioner. EPA may also consider other publicly available information regarding the petitioner that informs EPA's evaluation regarding how "other economic factors" may cause a small refinery to experience DEH if required to comply with its RFS obligations.

[5] DOE has calculated refining industry gross margins and net margins for 2014, 2015, and 2016, based on public data. The average industry gross and net margins for these three years were $11.40/bbl and $6.52/bbl, respectively (net margin only includes direct operating expenses, it does not include financial expenses such as interest, and depreciation/amortization). (b) (4) average gross margin and net margin (excluding financial expenses) for 2014-2016 were (b) (4) and (b) (4) , respectively.

[6] DOE has not scored this category for any hardship petition evaluations.

(b) (4) submitted a petition to EPA on December 21, 2017, for an extension of the RFS small refinery exemption for (b) (4) for 2017. In support of its petition, (b) (4) submitted financial and other information, including a completed DOE survey form PI-588, which specified the factors that (b) (4) believes demonstrate DEH. (b) (4) [7] (b) (4)

[8]

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption from compliance with its RFS requirements based on a demonstration by the small refinery of a DEH. As described above, (b) (4) petition presents financial information that documents (b) (4) along with other metrics of poor economic performance in 2017. Based on our review of all of the available information about (b) (4) and our consultation with DOE, EPA has concluded that (b) (4) will experience DEH that can be relieved in whole or in part by removing its RFS obligations for 2017. Therefore, EPA is granting (b) (4) request for a temporary extension of (b) (4) small refinery RFS hardship exemption for 2017.

EPA's decision is consistent with (b)(4) applied by DOE (b) (4) (b)(4) applied by DOE (b)(4) applied by DOE EPA has decided to grant 100% relief. As explained above, this decision is appropriate under the statutory authority to consult with DOE, consider the 2011 DOE study, and "other economic factors" and it is consistent with the case law recognizing EPA's independent authority in deciding whether to grant or deny RFS small refinery exemption petitions.[9]

This decision is a final agency action for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1), judicial review of this final agency action may be sought in the United States Court of Appeals for the appropriate circuit. This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.

---

[7] (b) (4) Petition at 6

[8] (b) (4) Petition at 7

[9] *Sinclair*, 874 F.3d at 1166; *See also Hermes Consol., LLC v. EPA*, 787 F.3d 568, 574-575 (D.C. Cir. 2015); *Lion Oil Co. v. EPA*, 792 F.3d 978, 982-983 (8th Cir. 2015).

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
NATIONAL VEHICLE AND FUEL EMISSIONS LABORATORY
2565 PLYMOUTH ROAD
ANN ARBOR, MICHIGAN 48105-2498

NOV 01 2017

OFFICE OF
AIR AND RADIATION

(b) (4)

Dear (b) (4)

I am writing in response to the petition from the (b) (4) for a one-year extension of the small refinery exemption for 2016 from the requirements of the renewable fuel standard (RFS) program for the (b) (4) As you know, the Clean Air Act (CAA) provided that small refineries would be temporarily exempt from the RFS requirements through December 31, 2010. (b) (4) qualifies as a small refinery that was covered by this temporary exemption.

Pursuant to CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2), small refineries may petition EPA to extend the temporary RFS exemption on the basis that compliance with the RFS requirements will cause "disproportionate economic hardship." Pursuant to these provisions, (b) (4) submitted a petition to EPA dated May 15, 2017, to extend the exemption for (b) (4) for 2016.

Based on the information in your petition, and after consultation with the Department of Energy, EPA has decided to grant a one-year extension of (b) (4) RFS small refinery temporary exemption. This means that from January 1, 2016, through December 31, 2016, (b) (4) gasoline and diesel production is not subject to the percentage standards of 40 CFR 80.1405, and (b) (4) is not subject to the requirements of an obligated party for fuel produced at (b) (4) during that period.

If you have any questions, please contact Byron Bunker of my staff at 734-214-4155.

Sincerely,

Christopher Grundler, Director
Office of Transportation and Air Quality

Attachment

Grant of Request for Extension of Small Refinery Temporary Exemption Under the Renewable Fuel Standards Program For

(b) (4)

Contains Information Claimed by

(b) (4)

To be Confidential Business Information

Office of Transportation and Air Quality

EPA received a petition from (b) (4)
dated May 15, 2017, for a one-year extension of the Renewable Fuel Standard (RFS) small refinery exemption for the (b) (4) for (b) (4) 2016 RFS obligations. For the reasons described herein, EPA is granting (b) (4) request for an extension of (b) (4) RFS small refinery exemption for 2016.

Section 211(o)(9) of the Clean Air Act (CAA) authorizes the Administrator to temporarily exempt small refineries from their renewable fuel volume obligations under the RFS program on the basis of a finding of "disproportionate economic hardship" (DEH). The statute directs EPA, in consultation with the Department of Energy (DOE), to consider the (DOE) Small Refinery Study and "other economic factors" in evaluating small refinery exemption petitions, but CAA section 211(o)(9) leaves the definition of DEH to the Administrator's discretion for purposes of implementing this exemption provision.

After evaluating information submitted by the petitioner, DOE provides a recommendation to EPA on whether a refinery merits exemption from RFS. As described in its study, DOE assesses the potential for DEH at a refinery on the basis of two sets of metrics. One set assesses structural and economic conditions that could disproportionately impact the refinery, (described as "disproportionate impacts" for purposes of DOE's scoring metrics, and also described as "structural" factors or conditions here). The other set assesses economic factors that could cause viability concerns (described as "viability" for purposes of DOE's scoring metrics, and also described as "economic" factors or conditions here).

In earlier decisions, DOE and EPA considered that DEH exists only when a refinery experiences both disproportionate impacts and viability impairment. In response to concerns that the two agencies' threshold for establishing DEH was too stringent, Congress clarified to DOE that DEH can exist if DOE finds that a small refinery is experiencing *either* disproportionate impacts *or* viability impairment. If so, Congress directed DOE to recommend a 50 percent exemption from the RFS. This is due to language included in an explanatory statement accompanying the 2016 Appropriations Act that stated: "If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner."[1] (b)(4) applied by DOE (b) (4) (b)(4) applied by DOE
(b)(4) applied by DOE
(b)(4) applied by DOE (b) (4) (b)(4) applied by DOE (b) (4) (b)(4) applied by DOE

(b)(4)

(b)(4)

[1] Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015). The Explanatory Statement is available at: https://rules.house.gov/bill/114/hr-2029-sa.
(b)(4)
[3] *Id*. at 1221.

(b)(4)

(b)(4)

For the purposes of implementing CAA section 211(o)(9) for 2016 small refinery exemption decisions, EPA has determined that DEH can exist on the basis of adverse structural conditions alone. A difficult year for the refining industry as a whole may exacerbate economic problems for small refineries that face disproportionate impacts. Throughout the industry, refineries reported lower net refining margins in 2016. This industry-wide downward trend can result in tangible effects on small refineries with adverse structural conditions, including diminished refining margins, reduced profitability, cash flow limitations that can hinder its ability to acquire renewable fuel credits (Renewable Identification Numbers, or RINs) for compliance, and the potential to impair refinery operations. In addition, small refineries sometimes lack access to capital or credit that can also be necessary to achieve compliance.

In its industry-wide analysis, DOE has found that poor access to capital and credit, lack of other business lines, and high diesel production compared to the industry average can suggest a disproportionate structural impact. Poor refining margins, limited ability to blend ethanol, and market competition can suggest a disproportionate economic impact. As noted above, DOE scores the disproportionate structural and economic impacts together as half of its DEH analysis. Here, EPA acknowledges tha [redacted] (b) (4) [redacted] EPA's review of DOE's analysis is in accord with this conclusion. These conditions disadvantage the refinery relative to larger refineries that may not face similar structural challenges.

DOE also assessed economic factors as the second component of DEH. Here, EPA acknowledges that [redacted] (b) (4) [redacted] (b) (4) [redacted]

Table 1[6]
DOE Evaluation of (b) (4) Petition

1	Disproportionate Structural Impact Metrics		Score
a	Access to capital/credit	0 = Good access (BB- or above credit rating), 5 = Moderate access (rating in B's) 10 = Poor access (C rating or 50% D/E)	[redacted]
b	Other business lines besides refining and marketing	0 = Other Lines, 10 = No Other Lines	[redacted]

[4] *Id.* at 1213.
[5] From DOE recommendation for (b) (4) transmitted to EPA on October 6, 2017.
[6] The gray-shaded categories were developed as part of the DOE Small Refinery Study, but DOE has chosen not to assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE's explanation regarding why it does not assign scores for the gray-shaded categories.

c	Local market acceptance of Renewables	0 = Products accepted, 10 = Product not accepted	
	i E10	0 = High acceptance, 5 = Low acceptance 10= No acceptance	[redacted]
	ii E85	Not scored because of small E85 volumes	
	iii Biodiesel	Not available	
d	Percentage of diesel production	0 = D/(G+D) < Industry Avg. 5 = D/(G+D) > Ind. Avg<40%. 10=D/(G+D) > 40%	[redacted]
e	Subject to exceptional state regulations	0 = not subject, 5= Some barriers for compliance 10 = subject to exceptional state regulations	[redacted]
2	**Disproportionate Economic Impact Metrics**		
a	Relative refining margin measure [7]	0 = Above 3 year industry average 5 = Positive, below 3 year industry average 10= Negative	[redacted]
b	Renewable fuel blending (% of production)		
	i Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%	[redacted]
	ii Biodiesel blending (not used)	0 = 1.1% of diesel production, 1 = <1.1%	
	iii Other Advanced Biofuel blending (not used)	0 = some blending, 10 = no blending	
c	In a niche market	0 = niche 5 = moderate niche impact 10 = no niche	[redacted]
d	RINs net revenue or cost [8]	0 = revenue > cost, 10 = revenue < cost	
	Subtotal (average)		[redacted]
	Ranking (subtotal x 0.50)		[redacted]
3	**Viability Metrics**		
a	Compliance cost eliminates efficiency gains (impairment)	0 = no impact on efficiency, 5 = moderate impact, 10 = impact on efficiency	[redacted]
b	Individual special events	0 = no special event, 5 = moderate event, 10 = special event impacting viability	[redacted]
c	Compliance costs likely to lead to shut down	0 = not likely to shut down, 10 = likely to shut down	[redacted]
	Subtotal (average)		[redacted]
	Ranking (subtotal x 0.50)		[redacted]

[7] DOE has calculated refining industry gross margins and net margins for 2014, 2015, and 2016, based on public data. The average industry gross and net margins for these three years were $11.40/bbl and $6.52/bbl, respectively (net margin only includes direct operating expenses, it does not include financial expenses such as interest, and depreciation/amortization). [redacted] average gross margin and net margin (excluding financial expenses) for 2014-2016 were [redacted] and [redacted], respectively.

[8] DOE has not scored this category for any hardship petition evaluations.

[redacted] is only one factor in EPA's evaluation regarding whether to grant or deny a petition for a small refinery. EPA's analysis extends beyond the metrics DOE applies in assessing potential DEH. EPA considers all of the information submitted by a petitioner when it considers "other economic factors" in evaluating a small refinery petition. For example, EPA considers the information submitted by the petitioner that documents or explains relevant economic conditions or business decisions by the petitioner. EPA may also consider other publicly available information regarding the petitioner that informs EPA's evaluation regarding how "other economic factors" may cause a small refinery to experience DEH if required to comply with its RFS obligations.

(b) (4) submitted a petition to EPA on May 15, 2017, for an extension of the RFS small refinery exemption for (b) (4) for 2016. In support of its petition, (b) (4) submitted a completed DOE survey form PI-588, which specified the factors that (b) (4) believes demonstrate DEH. The petition stated that (b) (4) [9] The petition further noted that (b) (4) .[10] (b) (4) further reported (b) (4) [11] (b) (4) stated that (b) (4) [12] (b) (4) stated in its petition that (b) (4) [13]

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption from compliance with its RFS requirements based on a demonstration by the small refinery of a DEH. As described above, (b) (4) petition presents financial information that documents (b) (4) along with other metrics of poor economic performance in 2016. Based on our review of all of the available information about (b) (4), and our consultation with DOE, EPA has concluded that (b) (4) will experience DEH that can be relieved in whole or in part by removing its RFS obligations for 2016. Therefore, EPA is granting (b) (4) request for a temporary extension of (b) (4) small refinery RFS hardship exemption for 2016.

EPA's decision is consistent with [redacted] (b) (4) [redacted] EPA has decided to grant 100% relief. As explained above, this decision is appropriate under the statutory authority to consult with DOE, consider the 2011 DOE study, and "other economic factors" and it is consistent with the case law recognizing EPA's independent authority in deciding whether to grant or deny RFS small refinery exemption petitions.[14]

---

[9] (b) (4) Petition at 5.

[10] *Id.*

[11] *Id.*

[12] (b) (4) Petition at 6.

[13] (b) (4) Petition Exhibit 3.

[14] *Sinclair*, 867 F.3d at 1218; *See also Hermes Consol., LLC v. EPA*, 787 F.3d 568, 574-575 (D.C. Cir. 2015); *Lion Oil Co. v. EPA*, 792 F.3d 978, 982-983 (8th Cir. 2015).

This decision is a final agency action for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1), judicial review of this final agency action may be sought in the United States Court of Appeals for the appropriate circuit. This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
AIR AND RADIATION

MAR 2 3 2018

(b) (4)

Dear b(4)

I am writing in response to the petition from the (b) (4) for a one-year extension of the small refinery exemption for 2017 from the requirements of the Renewable Fuel Standard (RFS) program for (b) (4) refinery in (b) (4) As you know, the Clean Air Act (CAA) provided that small refineries would be temporarily exempt from the RFS requirements through December 31, 2010. The (b) (4) qualified as a small refinery that was covered by this temporary exemption.

Pursuant to CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2) small refineries may petition EPA to extend the temporary RFS exemption on the basis that compliance with the RFS requirements will cause "disproportionate economic hardship." Pursuant to these provisions, (b) (4) submitted a petition to EPA dated December 20, 2017, to extend the exemption for the (b) (4) for 2017.

Based on the information submitted in your petition, and after consultation with the Department of Energy, EPA has decided to grant a one-year extension of (b) (4) RFS small refinery temporary exemption. This means that from January 1, 2017, through December 31, 2017, the (b) (4) gasoline and diesel production are not subject to the percentage standards of 40 CFR 80.1405, and (b) (4) is not subject to the requirements of an obligated party for fuel produced at the (b) (4) during that period.

If you have any questions, please contact Byron Bunker of my staff at 734-214-4155.

Sincerely,

Christopher Grundler, Director
Office of Transportation and Air Quality

Enclosure – Decision Document

Grant of Request for Extension of Small Refinery Temporary Exemption Under the Renewable Fuel Standard Program For

(b) (4)

Contains Information Claimed by

(b) (4)

To be Confidential Business Information

Office of Transportation and Air Quality

EPA received a petition from (b) (4) [redacted] dated December 20, 2017, for a one-year extension of the Renewable Fuel Standard (RFS) small refinery exemption for the (b) (4) [redacted] in (b) (4) [redacted] in 2017. For the reasons described herein, EPA is granting (b) (4) [redacted] request for an extension of (b) (4) [redacted] RFS small refinery exemption for 2017.

Section 211(o)(9) of the Clean Air Act (CAA) authorizes the Administrator to temporarily exempt small refineries from their renewable fuel volume obligations under the RFS program on the basis of a finding of "disproportionate economic hardship" (DEH). The statute directs EPA, in consultation with the Department of Energy (DOE), to consider the (DOE) Small Refinery Study and "other economic factors" in evaluating small refinery exemption petitions, but CAA section 211(o)(9) leaves the definition of DEH to the Administrator's discretion for purposes of implementing this exemption provision.

After evaluating information submitted by the petitioner, DOE provides a recommendation to EPA on whether a refinery merits exemption from the RFS. As described in its study, DOE assesses the potential for DEH at a refinery on the basis of two sets of metrics. One set assesses structural and economic conditions that could disproportionately impact the refinery (described as "disproportionate impacts" for purposes of DOE's scoring metrics, and also described as "structural" factors or conditions here). The other set assesses economic factors that could cause viability concerns (described as "viability" for purposes of DOE's scoring metrics, and also described as "economic" factors or conditions here).

In previous year decisions, DOE and EPA considered that DEH exists only when a refinery experiences both disproportionate impacts and viability impairment. In response to concerns that the two agencies' threshold for establishing DEH was too stringent, Congress clarified to DOE that DEH can exist if DOE finds that a small refinery is experiencing *either* disproportionate impacts *or* viability impairment. If so, Congress directed DOE to recommend a 50 percent exemption from the RFS. This was relayed in language included in an explanatory statement accompanying the 2016 Appropriations Act that stated: "If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner."[1] Congress then directed EPA to follow DOE's recommendation.[2] [redacted] (b) (4) (b)(4) applied by DOE [redacted] (b) (4) (b)(4) applied by DOE [redacted] (b) (4) (b)(4) applied by DOE [redacted]

For the purposes of implementing CAA section 211(o)(9) for 2017 small refinery exemption decisions, EPA has determined that DEH can exist on the basis of adverse structural conditions alone. A difficult year may exacerbate economic problems for small refineries that face disproportionate impacts, resulting in tangible effects including diminished refining

[1] Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015). The Explanatory Statement is available at: https://rules.house.gov/bill/114/hr-2029-sa.

[2] Consolidated Appropriations Act, 2017, Pub. L. No. 115-31 (2017); *See also* Senate Report 114-281 ("When making decisions about small refinery exemptions under the RFS program, the Agency is directed to follow DOE's recommendations which are to be based on the original 2011 Small Refinery Exemption Study prepared for Congress and the conference report to division D of the Consolidated Appropriations Act of 2016.").

margins, reduced profitability, cash flow limitations that can hinder its ability to acquire renewable fuel credits (Renewable Identification Numbers, or RINs) for compliance, and the potential to impair refinery operations. In addition, small refineries sometimes lack access to capital or credit that can also be necessary to achieve compliance.

In its industry-wide analysis, DOE has found that poor access to capital and credit, lack of other business lines, and high diesel production compared to the industry average can suggest a disproportionate structural impact. Poor refining margins, limited ability to blend ethanol, and market competition can suggest a disproportionate economic impact. As noted above, DOE scores the disproportionate structural and economic impacts together as half of its DEH analysis. Here, EPA acknowledges tha (b)(4) applied by DOE [redacted] (b)(4) (b)(4) applied by DOE [redacted] EPA’s review of DOE’s analysis is in accord with this conclusion. These conditions disadvantage the refinery relative to larger refineries that may not face similar structural challenges.

DOE also assessed economic factors as the second component of DEH. Here, EPA acknowledges that (b)(4) applied by DOE [redacted] (b)(4) (b)(4) applied by DOE [redacted] (b)(4) (b)(4) applied by DOE [redacted]

Table 1[4]
DOE Evaluation of (b)(4) Petition

1	Disproportionate Structural Impact Metrics			Score
a	Access to capital/credit		0 = Good access (BB- or above credit rating), 5 = Moderate access (rating in B’s) 10 = Poor access (C rating or 50% D/E)	[redacted]
b	Other business lines besides refining and marketing		0 = Other Lines, 10 = No Other Lines	[redacted]
c	Local market acceptance of Renewables		0 = Products accepted, 10 = Product not accepted	
	i	E10	0 = High acceptance, 5 = Low acceptance 10= No acceptance	[redacted]
	ii	E85	Not scored because of small E85 volumes	
	iii	Biodiesel	Not available	
d	Percentage of diesel production		0 = D/(G+D) < Industry Avg. 5 = D/(G+D) > Ind. Avg<40%. 10=D/(G+D) > 40%	[redacted]
e	Subject to exceptional state regulations		0 = not subject, 5= Some barriers for compliance 10 = subject to exceptional state regulations	[redacted]

[3] From DOE recommendation for (b)(4) transmitted to EPA on February 22, 2018.
[4] The gray-shaded categories were developed as part of the DOE Small Refinery Study, but DOE has chosen not to assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE’s explanation regarding why it does not assign scores for the gray-shaded categories.

2	**Disproportionate Economic Impact Metrics**		
a	Relative refining margin measure [5]	0 = Above 3 year industry average 5 = Positive, below 3 year industry average 10= Negative	[redacted]
b	Renewable fuel blending (% of production)		
	i Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%	[redacted]
	ii Biodiesel blending (not used)	0 = 1.1% of diesel production, 1 = <1.1%	
	iii Other Advanced Biofuel blending (not used)	0 = some blending, 10 = no blending	
c	In a niche market	0 = niche 5 = moderate niche impact 10 = no niche	[redacted]
d	RINs net revenue or cost [6]	0 = revenue > cost, 10 = revenue < cost	
	Subtotal (average)		[redacted]
	Ranking (subtotal x 0.50)		[redacted]
3	**Viability Metrics**		
a	Compliance cost eliminates efficiency gains (impairment)	0 = no impact on efficiency, 5 = moderate impact, 10 = impact on efficiency	[redacted]
b	Individual special events	0 = no special event, 5 = moderate event, 10 = special event impacting viability	[redacted]
c	Compliance costs likely to lead to shut down	0 = not likely to shut down, 10 = likely to shut down	[redacted]
	Subtotal (average)		[redacted]
	Ranking (subtotal x 0.50)		[redacted]

EPA's analysis extends beyond the metrics DOE applies in assessing potential DEH. EPA considers all of the information submitted by a petitioner when it considers "other economic factors" in evaluating a small refinery petition. For example, EPA considers the information submitted by the petitioner that documents or explains relevant economic conditions or business decisions by the petitioner. EPA may also consider other publicly available information regarding the petitioner that informs EPA's evaluation regarding how "other economic factors" may cause a small refinery to experience DEH if required to comply with its RFS obligations.

[5] DOE has calculated refining industry gross margins and net margins for 2014, 2015, and 2016, based on public data. The average industry gross and net margins for these three years were $11.40/bbl and $6.52/bbl, respectively (net margin only includes direct operating expenses, it does not include financial expenses such as interest, and depreciation/amortization). (b) (4) [redacted] average gross margin and net margin (excluding financial expenses) for 2014-2016 were (b) (4) [redacted] and (b) (4) [redacted] respectively.

[6] DOE has not scored this category for any hardship petition evaluations.

(b) (4) submitted a petition to EPA on December 20, 2017, for an extension of the RFS small refinery exemption for (b) (4) for 2017. In support of its petition, (b) (4) submitted financial and other information, including a completed DOE survey form PI-588, which specified the factors that (b) (4) believes demonstrate DEH. (b) (4)

[7] (b) (4)

[8]

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption from compliance with its RFS requirements based on a demonstration by the small refinery of a DEH. As described above, (b) (4) petition presents financial information that documents (b) (4) in addition to other metrics of poor economic performance in 2017. Based on our review of all of the available information about (b) (4), and our consultation with DOE, EPA has concluded that (b) (4) will experience DEH that can be relieved in whole or in part by removing its RFS obligations for 2017. Therefore, EPA is granting (b) (4) request for a temporary extension of (b) (4) small refinery RFS hardship exemption for 2017.

EPA's decision is consistent with (b)(4) applied by DOE (b) (b)(4) applied by DOE [redacted] EPA has decided to grant 100% relief. As explained above, this decision is appropriate under the statutory authority to consult with DOE, consider the 2011 DOE study, and "other economic factors" and it is consistent with the case law recognizing EPA's independent authority in deciding whether to grant or deny RFS small refinery exemption petitions.[9]

This decision is a final agency action for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1), judicial review of this final agency action may be sought in the United States Court of Appeals for the appropriate circuit. This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.

---

[7] (b) (4) Petition at 6

[8] (b) (4) Petition at 14

[9] *Sinclair*, 874 F.3d at 1166; *See also Hermes Consol., LLC v. EPA*, 787 F.3d 568, 574-575 (D.C. Cir. 2015); *Lion Oil Co. v. EPA*, 792 F.3d 978, 982-983 (8th Cir. 2015).